

Marc J. Brown

May 18, 2012

Washington, D.C.

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1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF GEORGIA

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4 SECURITIES AND EXCHANGE :

5 COMMISSION, :

6 Plaintiff, :

7 v. : Case No.

8 PAUL T. MANNION, JR., et al., : 1:10-cv-03374-WSD

9 Defendants. :

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12 Washington, D.C.

13 Friday, May 18, 2012

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15 Videotaped Deposition of

16 MARC J. BROWN, called for examination by

17 counsel for Plaintiff, pursuant to notice, at the

18 Law Offices of K&L Gates, LLP, 1601 K Street, NW,

19 Washington, D.C., commencing at 10:05 a.m., before

20 Barbara A. Huber, CSR and Notary Public in and for

21 the District of Columbia, when were present on

22 behalf of the respective parties:

1 APPEARANCES:

2 On behalf of Plaintiff:

3 DAVID WILLIAMS, ESQUIRE

4 ADAM S. ADERTON, ESQUIRE

5 JOHN BOWERS, ESQUIRE

6 Securities and Exchange Commission

7 100 F Street, NE, Room 4221

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11 On behalf of Defendants:

12 STAVROULA E. LAMBRAKOPOULOS, ESQUIRE

13 R. JAMES MITCHELL, ESQUIRE

14 MATTHEW B. BOWMAN, ESQUIRE

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20 Also Present:

21 Dan Reidy, Videographer

22 * * * * *

1 C O N T E N T S

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1 P R O C E E D I N G S

2 (Brown Exhibits No. 1 and 2
3 marked for identification.)

4 VIDEOGRAPHER: This begins tape number
5 one in the video deposition of Marc Brown taken by
6 the Plaintiff in the matter of the Securities and
7 Exchange Commission versus Paul T. Mannion.

8 This is filed in the U.S. District Court
9 for the Northern District of Georgia, the Atlanta
10 Division. Case Number 1:10-cv-03374-WSD.

11 Today's deposition is being held at the
12 law offices of K&L Gates, LLP, 1601 K Street,
13 Northwest, Washington, D.C. 20006.

14 For identification purposes my name is
15 Dan Reidy, the video operator. The court reporter
16 is Barbara Huber. And we both represent Alderson
17 Court Reporting.

18 Today's date is May 18th, 2012. The time
19 on the video is 10:05 a.m. We are on the record.

20 At this time will all counsel please
21 introduce yourself and whom you represent, starting
22 with the SEC, please.

1 MR. WILLIAMS: Good morning. David
2 Williams, Adam Aderton, and John Bowers for the
3 Plaintiff, Securities and Exchange Commission.

4 MS. LAMBRAKOPOULOS: Good morning.
5 Stavroula Lambrakopoulos and Matt Bowman from K&L
6 Gates on behalf of all of the Defendants.

7 VIDEOGRAPHER: Will the court reporter
8 please swear in the witness.

9 Whereupon,

10 MARC J. BROWN,
11 was called as a witness by counsel for Plaintiff,
12 and having been duly sworn by the Notary Public,
13 was examined and testified as follows:

14 EXAMINATION BY COUNSEL FOR PLAINTIFF

15 BY MR. WILLIAMS:

16 Q Morning, Mr. Brown.

17 A Morning.

18 Q As I just said, my name is Dave Williams.
19 And I represent the SEC in this matter.

20 I'm going to hand you a document that --
21 labeled as Exhibit Brown 1. And I'm going to
22 represent to you that this document is the notice

1 of deposition that this the SEC sent earlier this
2 week --

3 A Okay.

4 Q -- noticing your deposition here today.

5 You've been designated by the Defendants
6 in this case as an expert witness.

7 Have you ever -- have you ever been
8 deposed before?

9 A I have not.

10 Q Okay. Well, let me -- let me just sort
11 of explain to you how -- the ground rules here.
12 I'm going to be asking you questions. Court
13 reporter's going to be taken down every word you
14 say.

15 You're under oath. It's -- it's sort of
16 like testifying here at trial except there's no
17 judge here today. So to the extent that opposing
18 counsel may interpose objections from time to time,
19 there's no judge here to rule on those objections
20 today, so they'll be preserved for the record. But
21 you should, nevertheless, answer the questions.
22 Don't answer any questions that would require you

1 to divulge any privileged information. Other than
2 that, you should feel free to answer.

3 With respect to my questions, I'll try
4 and make my questions as clear as possible. If
5 there's something about the question that you don't
6 understand, please let me know and I'll try and
7 phrase my question better. On the other hand, if
8 you answer my question, I'm -- I'm going to assume
9 that you understood the question. Is that fair?

10 A Sure.

11 Q Okay. Are you under any medication or
12 any other reason why you can't give truthful,
13 honest, and complete testimony here today?

14 A No.

15 Q Okay. And, you know, this is not an
16 endurance contest. If you -- if you'd like to take
17 a break, use the restroom, just let me know and
18 we'll -- we'll be happy to go off the record. Is
19 that fair?

20 A That's fair.

21 Q Okay.

22 A Thank you.

1 Q You've been -- you've been retained --
2 you've been identified by the Defendants in this
3 case as an expert witness.

4 Can you tell me what is the -- what
5 you've been asked to opine on?

6 A Sure. I was asked to, you know, take a
7 look at the net asset value statements as of August
8 31st, 2005, September 30th, 2005, and October 31st,
9 2005, and ascertain if it was reasonable, the
10 values that they placed for the World Health
11 securities, if that was reasonable.

12 Q I see. And I'm handing you another
13 document that's been marked for identification as
14 Brown Number 2. And I'm going to ask you to take a
15 look at that document.

16 A [Witness looked at document].

17 Q And do you recognize that document?

18 A It appears to be my report.

19 Q And the report you produced in -- in this
20 matter?

21 A That's correct.

22 Q Okay. And you indicated that you were

1 to -- you were asked to take a look at the -- the
2 reasonableness of certain valuations.

3 Reasonableness in terms of what?

4 A I'm sorry, can you repeat the question?

5 Q Yeah, I -- I think you indicated that you
6 were asked to -- to take a look at the
7 reasonableness of certain valuations.

8 Is that what you said?

9 A Yes.

10 Q Okay.

11 A I guess if -- if at the time when -- when
12 the Defendants did the valuations, if, you know,
13 looking back in time if those were -- if they were
14 reasonable. I'm not sure how else to say it.

15 Q Reasonable in -- in -- in what context?

16 A I guess the context that I took it in is
17 as a valuation professional, as someone who's
18 worked in restructuring situations, as someone
19 that's worked at a hedge fund, you know, if I was
20 standing in their shoes at the time or in the
21 marketplace at that time, you know, and I did a
22 valuation or I looked at this valuation, would I

1 say, you know, these guys are way off base or it's
2 reasonable or somewhere in between.

3 Q I see. I see. Can you tell me -- well,
4 you indicated you're a valuation professional.

5 What's your -- what's your educational
6 background?

7 A Sure. I've got a bachelor's of science
8 in finance with high honors from the University of
9 Illinois at Champaign Urbana. I've got an MBA in
10 finance, accounting, and strategy from the
11 University of Chicago. It's now the Booth School.
12 When I graduated it was the GSB. So that's my
13 formal education. Obviously conferences, you know,
14 those sorts of things. And then I've got some
15 des -- a designation as well.

16 Q When did you graduate from the University
17 of Illinois?

18 A 1996.

19 Q Okay. And when did you graduate from the
20 University of Chicago?

21 A 2004.

22 Q I see. So assuming that business school

1 is two years; is that right?

2 A I went part-time.

3 Q I see. So when did you start business
4 school?

5 A It took me about three years, so I wanna
6 say January of 2001.

7 Q Okay.

8 A Graduated in March of '04.

9 Q Okay. What did you do after you finished
10 college, or undergraduate?

11 A Sure. My first job was at -- in
12 investment banking at a firm called John Nuveen &
13 Company in Chicago.

14 Q And when you say investment banking, what
15 does that mean?

16 A You know, it's a broader company. They
17 do a lot of municipal finance. So this was -- I
18 was in their education group. So I actually helped
19 schools raise money to build dorms, you know, new
20 buildings for -- for sci -- you know, the new
21 science department, what have you. Raised money
22 for Purdue University, Kent State, Eastern

1 Michigan, that sort of thing. It issued bonds in
2 the marketplace.

3 I also looked at derivative securities,
4 if there was certain strategies that would help
5 them minimize interest rate risk, which is a big,
6 big factor for sort of not-for-profit schools and
7 that sort of thing.

8 Q Okay. So -- so bond investing and -- and
9 derivative securities investing?

10 A I wouldn't call it investing. I'd call
11 it I guess similar to Houlihan Lokey or
12 Mr. Mannion, Mr. Reckless on the HPC side. You're
13 actually raising money for people. It's -- it's --
14 you're an advisor, you're a financial advisor, if
15 you will.

16 Q Okay. You're a financial advisor raising
17 money for -- for individuals or -- or entities?

18 A Entities, yeah.

19 Q Okay.

20 A In my case not for profits but --

21 Q Okay.

22 A -- same idea. If you wanna raise money

1 for IBM, different focus but that's -- that's what
2 investment bankers do.

3 Q Okay. And how long did you do that?

4 A About 14 months.

5 Q Okay. And what did you do after that?

6 A After that I went to work for
7 Pricewaterhouse in their valuation services group,
8 also in Chicago.

9 Q And Pricewaterhouse is that -- is that an
10 accounting firm?

11 A It is.

12 Q Okay.

13 A It's one of the -- I think at the time
14 the Big Five that -- you know, was Big Six now it's
15 Big Four I think.

16 Q Okay. And you indicated you were in the
17 valuation services group?

18 A That's correct.

19 Q What did you do there?

20 A Well, when I started I was I think an
21 analyst and got promoted in a couple months to
22 senior analyst. And I did valuations of companies

1 for a variety of purposes.

2 Q Okay. And was that -- was that your sole
3 responsibility, to do valuations of companies?

4 A Yes.

5 Q Okay. And how did you do those
6 valuations?

7 A You know, it was usually part of a team.
8 I was, you know, one of the more junior people to
9 start off with. Got to be still fairly junior but,
10 you know, a level up partway through. A lot of
11 research, a lot of modeling, using the various
12 standard valuation approaches. You know, they sent
13 us through I think a week-long training course, a
14 global basis. We had people in from Europe as part
15 of the training as well.

16 Q I see. And what were the standard
17 valuation approaches that you were taught in your
18 training?

19 A There's probably -- if you wanna break it
20 down, there's three. There's what you call a
21 market approach. There's an income approach. And
22 there's a cost approach.

1 Q What's a cost approach?

2 A A cost approach is you sort of look at
3 the cost of the assets of a business. Probably
4 more applicable for say a real estate company or,
5 you know, maybe a mining company that's got, you
6 know, proven reserves in the ground and what it
7 would cost to extract those reserves, that sort of
8 thing. And you make adjustments.

9 If it's a -- let's say it's a -- a piece
10 of machinery that's three years old and you look in
11 the marketplace and when a brand new one sells for
12 a million dollars, the three-year-old one probably
13 won't be the same price.

14 Q So how do you figure out how -- how the
15 three -- how much the three-year-old one is worth?

16 A There's various ways of doing it. It's
17 not a real focus of mine. It's not something you
18 do a lot of unless you are specific -- we actually
19 had a group -- a sub group within the group that
20 was machinery and equipment appraisal and a second
21 group that was real estate appraisal.

22 Q Okay. So -- so the cost approach is

1 focused on -- on what it would cost for -- for a
2 firm to -- to obtain a particular asset?

3 A Yeah, it's one way of looking at it.

4 Q How about the -- the income approach?

5 A There are several different methods of
6 that, sub methods. But it's sort of the
7 overarching theme is you look at sort of the future
8 expected cash flows of a business and you bring 'em
9 back to their present value equivalent.

10 Q And is -- is included in that, that sort
11 of analysis, what's sometimes referred to as a
12 discounted cash flow --

13 A Sure.

14 Q -- analysis?

15 A That's probably the most common way of
16 doing it.

17 Q And what is a discounted cash flow
18 analysis.

19 A With a discounted cash flow, you're
20 typically taking projections from the management of
21 a company and, you know, whether it's five years,
22 seven years, ten years worth of projections. And

1 you -- you know, you look at the projections. You
2 assess 'em. You say are these reasonable or not
3 reasonable. And then you -- you bring the value.

4 So if it's gonna say three years out that
5 the -- the cash flow of the business is a million
6 dollars, a million dollars three years from now is
7 not worth a million dollars today. It's -- it's
8 different obviously. So you -- you discount that
9 back to today's value using a -- a rate of return.

10 Q Okay. Are there any other approaches
11 under which you would call the income approach
12 to -- to value a -- an asset?

13 A Yeah, there's -- there's a royalty rate
14 method that you use for intellectual property.
15 That's -- that's one other sort of subset of the
16 income approach.

17 Q Okay. How about multiples of -- of
18 earnings?

19 A Yeah, that gets to be the market
20 approach --

21 Q Okay.

22 A -- that I spoke about. That's a subset

1 of the market approach.

2 Q Okay. What's the market approach?

3 A The market approach is, as the name
4 implies, you look at the actual market to come up
5 with the derivation of values. So you get a
6 subject company to try -- trying to value. And you
7 look out in the marketplace publicly traded
8 companies that do the same sort of thing that your
9 subject company does. And you look at market
10 multiples that are implied by the stock price of
11 those companies.

12 Q And what sort of market multiples,
13 generally?

14 A I'd say probably the most common are
15 revenue and EBITDA multiples. But there's other
16 multiples for specific -- you know, some people
17 may -- may value a hospital, look at price per bed.

18 Q Okay. And so in preparing these
19 valuations, you indicated you would be part of a
20 team; is that right?

21 A Yes.

22 Q Okay. And how large was a team,

1 typically, if you could say?

2 A Typically three to four people. We're
3 talking about my time at Pricewaterhouse, right?

4 Q Yes, sir.

5 A Yeah.

6 Q Three to four people?

7 A Typically.

8 Q Typically. And what would be the -- the
9 position of the most senior person on the team, if
10 you could say, typically?

11 A Sure. Typically it'd be the partner.
12 And, you know, they would have sort of overall
13 oversight, you know, client relations, sign off on
14 the final product, probably review it at some point
15 in a draft form, you know.

16 Q Okay. And would your -- would your role
17 include drafting valuations?

18 A What do you mean by drafting valuations?

19 Q Writing it, writing down what the final
20 determination would be.

21 A Well, I guess the reason I -- I asked the
22 question, there's sort of two ways. I mean one is

1 sort of the math, right? One's the schedule. And
2 then often there's a report. So I think in my time
3 at Pricewaterhouse, I probably did both. In fact
4 my first project I did almost entirely myself.

5 Q Okay. What was your first project?

6 A I was valuing securities of a safety
7 products manufacturer.

8 Q Okay. And was it a public company?

9 A No.

10 Q What did you do to value that company?

11 A We're going back a few years. I think I
12 looked at an income approach and a market approach.
13 But it's, you know, 15 years ago.

14 Q Sure. When you said income approach, is
15 that what you described earlier?

16 A Yes. And market approach same, you know,
17 public comparables.

18 Q And income approach, did you do a
19 discounted cash flow analysis?

20 A I think so.

21 Q Okay. And do you know what that
22 valuation was used for?

1 A I don't, no. Maybe tax purposes.

2 Q Okay. Did you have any interaction with
3 the client on that -- on that valuation?

4 A I'm not sure. If I did, it wasn't
5 extensive.

6 Q Okay. Do you recall any other valuations
7 that you did at -- at Pricewaterhouse Coop --
8 Pricewaterhouse?

9 A Sure. You know, I was there a little
10 over a year. And, you know, I'm not sure how many
11 I did at the time. We did a -- a couple of account
12 receivable valuations for tax purposes. You know,
13 when you look at the accounting firms, they have
14 different focus than some others. They do a lot of
15 tax-related work. That's -- that's where a lot of
16 'em got started is in the tax department.

17 So one of those was for a clothing
18 company. Don't recall what the other two were for.
19 I worked on something for British Petroleum, again
20 for tax purposes there, the marketing --

21 Q And what was -- I'm sorry.

22 A Their marketing wing, which is gas

1 stations as opposed to, you know, refining or
2 extraction.

3 Q Okay. And you -- you indicated earlier
4 that you had -- you had done two accounts
5 receivables valuations.

6 With respect to the British Petroleum
7 engagement, what -- what was the nature of the
8 valuation that you did?

9 A We were valuing the -- you know, the
10 downstream, you know, the actual gas stations.
11 They -- they owned some piece. I don't remember.
12 I think it was for tax purposes. They may have
13 been looking to sell 'em. I don't recall the
14 purpose.

15 Q Okay. Do you recall any other valuations
16 you did at Pricewaterhouse?

17 A I worked on a staffing company while I
18 was there, valuation. I think it was a shareholder
19 dispute. I worked on a retail store. That was
20 minority shareholder dispute. I'm sure there were
21 others but those were the ones that I can recollect
22 at this point.

1 Q Okay. And so with respect to the
2 staffing company that you indicated came in the
3 context of a shareholder dispute, is that --

4 A Uh-huh.

5 Q -- what you were saying?

6 What was the nature of the valuation work
7 that you did in -- in that case?

8 A Similar to others. You know, doing
9 research, what is the universe of staffing
10 companies, the time, what are their market
11 multiples. We did a discounted cash flow approach.
12 Those were the two that I recall. So it was, you
13 know, doing the -- the research and the modeling.
14 I don't believe that I wrote the report at all on
15 that one.

16 Q Okay. Did -- did you -- did you -- were
17 you aware of what -- what the -- what the valuation
18 was to be used for or what -- what was the context
19 that --

20 A Yeah, it was -- it was a dispute. It was
21 some sort of dispute.

22 Q Was it litigation?

1 A It may have been. I'm not sure if it was
2 litigation, arbitration. You know, it -- just to
3 sort of put it in context, at this point I'm a
4 year-and-a-half out of undergrad and fairly
5 involved, certainly for that level, but not
6 necessarily part of sort of the strategic aspects
7 of it.

8 So I don't remember. You know, it's not
9 like I was in with the partner and senior manager
10 meetings. I just don't recall what the -- you
11 know, if it was an actual litigation or if it was
12 on arbitration or -- I don't recall the specifics.

13 Q Okay. So and you indicated and -- and,
14 you know, I think you indicated that those were
15 the -- the valuations that you did at
16 Pricewaterhouse that you can recall; is that right?

17 A Yes.

18 Q Okay. And you indicated you worked at
19 Pricewaterhouse for a little over a year.

20 Why'd you leave?

21 A So two weeks into my starting there, they
22 announced the merger with Coopers & Lybrand. That

1 got effectuated the following summer. And
2 obviously there was a little bit of turmoil along
3 those lines. And one of the partners -- we had
4 three partners in Chicago. One of -- one of them
5 left to go to Alix Partners. It was called Jay
6 Alix at the time.

7 THE REPORTER: It was called what?

8 THE WITNESS: Jay Alix.

9 And I saw an opportunity to go with him
10 as sort of his sole staff member, and, you know, do
11 something sort of entrepreneurial, you know, get
12 additional experience, that sort of thing.

13 BY MR. WILLIAMS:

14 Q And so you went with that partner?

15 A Yes.

16 Q Who was that partner?

17 A His name was Bruce DenUyl.

18 Q And when you went to Alix Partners, what
19 was your role there?

20 A So when I first started my role, on its
21 face there were three of us: Bruce, a woman who
22 was a -- sort of a manger-type role had also come

1 from Pricewaterhouse, and then I was the sole
2 staff. So that would have been early September of
3 1998. You know, by November, I was running my own
4 projects.

5 Q What sort of project were you running?

6 A Valuation projects.

7 Q Okay. And so at Alix Partners, when --
8 when you began there, what was your -- did you have
9 a title?

10 A Yes. It was consultant.

11 Q Okay. And as a consultant, can you
12 describe generally the types of individuals or
13 entities that you consulted?

14 A Sure. It was a variety. I think I was
15 promoted a couple times between that and later, but
16 I'll try and think back to that. I mean I worked
17 on a valuation as part of the litigation for a --
18 like a -- a home products company. I was involved
19 in a valuation for a litigation involving some
20 optical technology companies.

21 You wanted just when I was a consultant
22 or --

1 Q Indicate whether or not it changed at --
2 as the time went on.

3 You indicated you -- you received
4 promotions as time --

5 A Yeah --

6 Q -- went on?

7 A -- I mean, you know, initially, the first
8 month or two, it was sort of the manager, and I
9 worked underneath the manager. But given just my
10 performance and sort of client/company need, I soon
11 moved in as sort of a similar role as a manager,
12 without the title. So probably from three to four
13 months in, you know, to the present day I've sort
14 of had the same sort of role.

15 Q Okay. By the way, what's a manager?

16 A That wasn't the official title, but
17 someone who sort of manages a project. You know,
18 it's -- it's all valuation project, sort of project
19 based. You interface with the client. You handle
20 the administrative tasks. You oversee the work
21 that's done. You do the work that's done. You
22 probably write the report. You meet -- you meet

1 with the partner to review the work and, you know,
2 take their comments and any edits they might have.

3 Q And who was the partner who supervised
4 you at Alix Partners and -- and indicated the
5 change over time?

6 A Yeah, I mean it was primarily Bruce
7 DenUyl. Starting in 2000 another gentleman joined
8 us named Louis Dudley. And then since then there's
9 other people that have joined or have been
10 promoted. You know, we grew fairly rapidly. I
11 think there were 70 people in the company when I
12 started and it's 900 now or something like that.

13 Q Okay. And did you report directly to
14 Mr. DenUyl --

15 A Uh-huh.

16 Q -- or was -- you have to say --

17 A Yeah. Sorry.

18 Q Okay. And by the way, DenUyl, that's
19 D-E-N capital U-Y-L?

20 A Yes.

21 Q Okay. And what -- you indicated you did
22 valuations.

1 Did you do anything other than
2 valuations?

3 A Sure. What time frame are we talking
4 about?

5 Q At any time while you worked for Alix
6 Partners.

7 A Sure. I also do reinstructing work,
8 where you're a financial advisor, whether it's to
9 banks or companies. I was an advisor to the
10 Department of Justice recently on a restructuring
11 as well. I've done litigation work. You know,
12 some general sort of financial and economic
13 analysis, maybe not valuation-related. There's not
14 a lot of that sort of thing.

15 It's -- it's mostly valuation but a
16 decent amount of restructuring as well. It just
17 depends on -- in 2009 I worked on the General
18 Motors bankruptcy. I think in 2009 everything I
19 worked on was restructuring or distressed.

20 Q Okay. And so over -- over a period of
21 years you indicate that -- that your focus was
22 varied, but you indicate I think that the majority

1 of your time was spent on valuation?

2 A I think that's fair.

3 Q Okay. You indicated you -- you worked on
4 litigation.

5 You worked on litigation in what respect?

6 A Doing financial and valuation economic
7 analyses. Primarily sort of valuation-related
8 cases, shareholder disputes, that sort of thing.
9 Sometimes it was just a straight damages sort of
10 litigation.

11 Q Okay. And your -- your report, which
12 we've labeled as Brown Number 2, has attached to it
13 as Exhibit 1 your curriculum vitae. I'm going to
14 ask you to turn to that part of the document.

15 You find that part of the document?

16 A Uh-huh.

17 Q There appears to be a gap in your service
18 at Alix Partners between 2006 and 2008.

19 Can you explain that, what you did during
20 that period of time?

21 A Yeah, I wouldn't call it a gap. I went
22 to work for a different company. The Chicago

1 Fundamental Investment Partners --

2 Q Yes.

3 A -- that's the hedge fund.

4 Q Okay. And well, I mean gap in that
5 inasmuch as you started in '98 and stopped and then
6 started again; is --

7 A Right.

8 Q -- that fair?

9 A That's fair.

10 Q Okay. And what do you do for Chicago
11 Fundamental Investment Partners?

12 A I was an investment analyst.

13 Q And what does an investment analyst do?

14 A Generally they look at securities in
15 companies and provide recommendations whether to
16 buy or sell those securities.

17 Q Okay. And is that what you did for
18 Chicago Fundamental Investment Partners?

19 A It is.

20 Q And did you do anything other than that?

21 A No. I mean, you know, I can expand on
22 that role but that's the general role that I had.

1 Q Why did you leave Alix Partners in 2006?

2 A Sure. You know, when I went to undergrad
3 and got a degree in finance -- and I don't think
4 we've talk about it but I've got a Chartered
5 Financial Analyst designation, the CFA. You know,
6 my intent at some point was to go into money
7 management. That's one reason why I went in
8 investment banking. It's one of the reason I went
9 in valuation. And frankly, working at Alix
10 Partners worked out well. And I stayed longer than
11 I thought I would. And figured I'd, you know, give
12 money management a try.

13 Q Okay. And why did you go back to Alix
14 Partners?

15 A Because, you know, there's some good
16 things about money management and some bad things.

17 Q What -- what were the bad things?

18 A It's a -- the way the business works, the
19 way the hedge fund industry works is, you know, you
20 need to have your portfolio managers make trades
21 based on your recommendations. And if for whatever
22 reason if they're risk-adverse and they don't make

1 the trade, then you don't really get compensated.

2 Q Okay. And as an investment analyst for
3 Chicago Fundamental Investment Partners, did you --
4 did you produce analyst reports?

5 A No. It's not -- for -- I'm sorry, for
6 Chicago Fundamental?

7 Q Yes, sir.

8 A Yeah, reports, no. I mean we did memos,
9 presentations. You'd have -- you know, a room this
10 size, you'd get -- at the time, there were probably
11 ten of us on the investment side of the business.
12 And you'd get in a room and you'd talk about
13 companies.

14 Q So you -- you'd make oral presentations?

15 A I mean there'd be schedules and maybe
16 a -- a one- to two-page sort of memo. But I
17 wouldn't -- I guess I wouldn't call it a report.
18 It's not like this. I didn't sign it. It -- you
19 know, it wasn't submitted anywhere. It was you
20 threw one around the table and you said, you know,
21 turn to page 2, this is why I think it's good.

22 Q And you were recommending particular

1 securities?

2 A Uh-huh.

3 THE REPORTER: Your response?

4 BY MR. WILLIAMS:

5 Q You've got to say "yes" or "no."

6 A Yes. Sorry.

7 Q And -- and these were recommendations
8 that -- that you discussed and -- and circulated
9 internally; is that fair?

10 A That's fair.

11 Q Okay. And who would you be discussing
12 your recommendations with?

13 A It would be the investment team.

14 Q And it would be up to them whether or not
15 they -- they traded on your recommendations?

16 A Yeah, there were -- there were six
17 founding partners, if you will, and then four
18 analysts, including myself. And you'd make a
19 recommendation. And it was sort of a black box,
20 you know. They may tell you they loved it. And
21 then you'd talk to 'em three days later: Did you
22 put the trade on? Oh, no, I haven't done it.

1 So it was a little unclear how the
2 process worked. You'd sort of hear in the room
3 either I like the idea or I don't like the idea.
4 And sometimes it got executed, sometimes it didn't.

5 Q And did you have -- have a sense of -- of
6 why they -- they weren't relying on your
7 recommendations?

8 A I don't know if I'd put it that way.
9 It -- no, I don't. I mean that was part of my
10 frustration with working there.

11 Q I mean how would you put it?

12 A I'm sorry, I don't understand the
13 question.

14 Q Well, I -- I said did -- I asked you if
15 you had a sense of why they wouldn't rely on your
16 recommendations and you said I wouldn't put it that
17 way. So I --

18 A Oh, they --

19 Q -- don't want to mischaracterize --

20 A -- that they're not --

21 THE REPORTER: One at a time, please. I
22 didn't get the question.

1 BY MR. WILLIAMS:

2 Q Well, I asked you if -- if you have a
3 sense of why they wouldn't rely on your
4 recommendations. And you said that I wouldn't put
5 it that way. So I wanted to clarify how would you
6 put it, because I don't mean to mischaracterize
7 what you said.

8 A I guess what I would say is it wasn't
9 that they didn't rely on my recommendation. As I
10 indicated, they may say that sounds like a good
11 thesis, we like the idea.

12 Sometimes there were macro aspects that
13 they felt differently about. Sometimes they were
14 fund needs that they felt differently. We've got
15 too much exposure to sector X in -- in their view.
16 So it's a good idea but until we get less exposure,
17 we're not gonna implement it.

18 Q I see. And this would be explained to
19 you after the fact or --

20 A Sometimes.

21 Q Sometimes there'd be no explanation?

22 A Correct.

1 Q Okay. And so you stayed at for -- with
2 Chicago Fundamental for -- for two years and --

3 A Uh-huh.

4 Q -- then you -- you went back to Alix
5 Partners?

6 A I was recruited back, yes.

7 Q Okay. You were recruited back by whom?

8 A By a different partner.

9 Q Which partner?

10 A Alan Lee.

11 Q Okay. And you were recruited back by --
12 by Mr. Lee to do what?

13 A To do the same sorts of things that I'd
14 done previously.

15 Q Which -- which would be what?

16 A Valuation work, restructuring work,
17 litigation support.

18 Q Okay. And did you work for -- for
19 Mr. Lee upon your return to Alix Partners?

20 A Well, I -- I did, amongst others, Bruce
21 DenUyl, Louis Dudney, other -- you know, we call
22 them managing directors, so those and others.

1 Q And what was your position when you
2 returned to Alix Partners?

3 A A director.

4 Q What's the difference between a director
5 and a managing director?

6 A It probably depends on where you're at in
7 that span. We're a fairly flat organization.
8 We've got five levels. Managing director's the
9 top, director's second. A director is someone
10 who -- well, you asked managing director. I'm
11 sorry. They're probably more of a sales-focused
12 role.

13 Q What does that mean, sales-focused? In
14 terms of what?

15 A Generating new projects.

16 Q I see. And how about the director?

17 A Yeah, director's probably more in the
18 nitty gritty details of the analyses. You sort
19 of -- you know, you oversee any staff that's
20 working on it, you do the administrative tasks, you
21 interface with the clients. The managing director
22 does as well. But if you start a project, you

1 know, and it's a six-week project, you know, maybe
2 I would talk to the client ten times and the
3 partner would talk to 'em twice, something like
4 that.

5 So, you know, they -- they have overall
6 oversight. But depending on who the director is,
7 if you're a new director, the MD's probably more
8 involved. If you're a senior director, such as I
9 am, you know, you know, I don't have all -- you
10 know, less -- the MDs trust me and, you know, know
11 I'm gonna do what's right.

12 Q Can you -- can you approximate how many
13 managing directors there are at Alix Partners?

14 A I have no idea.

15 Q Okay. And you indicate that there are
16 five levels. Managing director is the top and then
17 director.

18 What -- what are the other three levels?

19 A Vice president, associate, and analyst.

20 Q I see. And during your time at Alix
21 Partners, have you held any of those titles other
22 than director?

1 A Yeah, we changed -- we changed our title
2 structure at some point. So I started as a
3 consultant. I was promoted to associate, which is
4 the same as a VP. And then I -- I think I made
5 senior associate, which is the same as a director.
6 And then I was a senior associate for a year and
7 then we switched titles, if I recall.

8 Q So you -- you went from being a senior
9 associate to director, but it was essentially the
10 same title?

11 A Yeah, and just changed the titles. They
12 were -- the MDs were called principals at the time.
13 And now they're managing directors.

14 Q I see.

15 A So I guess I've been promoted twice since
16 I was there.

17 Q How did you with come to be retained in
18 this case?

19 A I believe Stavroula knew some of my
20 colleagues at Alix Partners here in our Washington,
21 D.C., office. And she inquired with them if they
22 knew someone within Alix Partners who, you know,

1 had valuation experience, maybe hedge fund
2 experience, and, you know, you know, were they
3 interested in -- in potentially testifying in this
4 case.

5 Q Okay. And do you have hedge fund
6 experience?

7 A I worked at one for two years.

8 Q Oh, the --

9 A Chicago --

10 Q -- Chicago --

11 A -- Fundamental --

12 Q -- Fundamental --

13 A -- Investment Partners.

14 THE REPORTER: Remember, one at a time,
15 please.

16 BY MR. WILLIAMS:

17 Q Chicago Fundamental?

18 A That's correct.

19 Q And when was that that -- that

20 Ms. Lambrakopoulos reached out to you?

21 A I think we spoke probably the latter part
22 of March of this year.

1 Q When were you retained?

2 A I think our engagement letter might be
3 dated March 30th. May have been signed, you know,
4 a day or two later. I'm not -- I could be off a
5 couple days but it's -- it's around that time
6 frame.okay.

7 Q Okay. Can you -- can you describe for me
8 generally what the terms of your engagement are?

9 A You know, we charge by the hour. It's
10 not a contingent upon, you know, what my opinion
11 is. Sort of work, you know, with K&L Gates. I
12 don't know, what else would you like to know?

13 Q How many hours have you worked in your
14 engagement up to this point?

15 A I'm not sure. We -- I think I did about
16 140 hours through sort of April and then whatever
17 time I spent in May. I'm not sure what that is,
18 maybe another forty hours or so.

19 Q Okay.

20 A Fifty maybe. I'm not sure.

21 Q You indicated that terms of your -- your
22 engagement, you're not contingent on any particular

1 outcome.

2 To your knowledge has Alix Partners ever
3 entered into -- entered into any valuation
4 engagements where their compensation was contingent
5 upon a particular outcome?

6 A Yeah. On the -- on the restructuring
7 side it's different. So when we do sort of
8 litigation consulting, this is sort of a standard
9 engagement. You know, we charge by the hour. And
10 we agree to -- to look at the facts. And we'll
11 come up with an opinion that we think is
12 appropriate.

13 For the guys that do -- or the
14 restructuring assignments that we do, it's
15 different. Sometimes there is a -- a success fee
16 component, where, you know, you come in, you charge
17 an hourly rate and you say, you know, we think
18 we're gonna be able to, you know, make your EBITDA
19 go up 30 percent. And if we hit that, you know,
20 we're gonna get some percentage of that
21 improvement.

22 Q I see. My -- my reference to those was

1 to -- to valuation retentions.

2 A Umm.

3 Q To your knowledge.

4 A Yeah, I -- I don't -- I'm trying to
5 think. Nothing that I've been involved with, you
6 know.

7 Q Okay. How many -- you indicated earlier
8 today that this -- this was your -- your first
9 deposition.

10 How many times have you been retained
11 as -- as an expert witness in a litigation?

12 A This would be -- a litigation or
13 arbitration or --

14 Q Well, let's start with litigation.

15 A Yeah. This would be the second.

16 Q And in connection with the -- when was
17 the first time?

18 A Maybe December of 2011.

19 Q So --

20 A Six months --

21 Q -- six months ago?

22 A -- ago, yeah.

1 Q Okay. And that's -- and that -- and
2 that's in connection with just another ongoing
3 litigation?

4 A Yes.

5 Q And is that an ongoing litigation in
6 state court or federal court?

7 A Huh. It's a bankruptcy matter. It's a
8 slow mover. I think it's federal but I'm -- I'm
9 not certain, actually.

10 Q Bankruptcy is probably federal.

11 A Yeah, right.

12 Q What's the -- the -- name of the case?

13 A It is ISB Bank. And it was a -- we're
14 working for the plaintiffs, which is the trustee.
15 It's a bank -- community bank that, you know, went
16 bankrupt and was seized by the FDIC. And we're
17 working into fraudulent conveyance, so a valuation
18 solvency analysis.

19 Q And when you say "we," who do you -- who
20 do you mean?

21 A Alix Partners.

22 Q And who -- who is responsible for that

1 particular engagement?

2 A I am.

3 Q And who are you working with in
4 connection with that engagement?

5 A The trustee.

6 Q Well, when you -- you refer to "we" at
7 Alix Partners, are you the only person from Alix
8 Partners working --

9 A No, there's a -- there's another director
10 involved, Jeff Kopa who's working under my
11 direction? I -- there may -- one of our an -- our
12 analysts may have done some work on it, but it's
13 not -- it's not a very big case.

14 Q Okay. So -- so yourself and Mr. Kopa and
15 perhaps a small amount of work from -- from an
16 analyst and that's -- those are the individuals
17 from Alix Partners that are working on that
18 retention?

19 A Yes. There was a managing director
20 involved, who's left the firm, as well.

21 Q Who was that?

22 A Kevin Carmody.

1 Q And did -- did Mr. Carmody have any role
2 in obtaining the -- the engagement?

3 A Yeah, he and I went and pitched the
4 business to the trustee.

5 Q When you say pitched the business, what
6 does that mean?

7 A We met with the trustee and, you know,
8 presented our credentials and said, you know, we'd
9 like to work with you, do you want to work with us.

10 Q And yourself and Mr. Carmody participated
11 in that meeting with the trustee?

12 A That's correct.

13 Q And anyone else from Alix Partners?

14 A No.

15 Q Okay. And in connection with this
16 retention in this -- in this case, is there anyone
17 from Alix Partners other than you working on this
18 retention?

19 A Yes.

20 Q Who is that?

21 A It would be Chris Ruble, Matt Reizman,
22 Katie Todd.

1 Q And what's -- what's Mr. Ruble's position
2 at Alix Partners?

3 A He's a vice president.

4 Q And so that's --

5 A One level --

6 Q -- some --

7 A -- down from me.

8 Q Exactly. One level down from director.
9 Okay.

10 How about Mr. Reizman?

11 A He's an associate.

12 Q That's one level down from vice
13 president?

14 A Correct.

15 Q Okay. And how about Ms. Todd?

16 A She's an analyst.

17 Q One level --

18 A One level down as well.

19 Q Got it. So that's -- including yourself,
20 that's four individuals from Alix Partners?

21 A Correct.

22 Q Anyone else from Alix Partners working on

1 this engagement at all?

2 A Some, you know, admin from the
3 secretaries, but no, no one else.

4 Q Okay. Did anyone other than you
5 participate in the drafting of this report?

6 A I'm sure Mr. Ruble was involved.

7 Q How was he involved?

8 A He drafted sections of it, but I, you
9 know, overwrought -- wrote and changed to -- to fit
10 what I thought.

11 Q Which sections did Mr. Ruble draft?

12 A Certainly the beginning stuff, you know.

13 Q When you say the beginning stuff, what do
14 you mean?

15 A If you look -- if you wanna look at the
16 report --

17 Q Sure.

18 A -- you know, flip through it if that's
19 helpful, it'd be, you know, page 1, the background.
20 You know, he would have put the tables in.

21 Q The background section that appears on --
22 beginning on page 3?

1 A Yeah.

2 Q And continuing to page 11?

3 A [Witness looked at document]. Yeah, I
4 mean, you know, to -- to make it more clear and
5 fairly standard operating procedure, you know, for
6 efficiency sake, a more junior person'll -- will
7 sort of start, put the basic shell to it. And
8 the -- the expert will work through it and work
9 over it and say, you know, I -- I don't like how
10 you phrased that, you're saying the wrong thing
11 about my background, change that, and that sort of
12 thing.

13 Q Okay. And when you refer to standard
14 operating procedure, how many expert reports have
15 you participated in the drafting of?

16 A Maybe it's twenty, could be a few more or
17 a few less.

18 Q Okay. And of the twenty expert reports
19 that you've participated in the drafting of, how
20 many have gone out under your name?

21 A None.

22 Q Well, one, right?

1 A Well, yeah.

2 Q Right. Okay. Whose names have been
3 the -- the name on the expert reports that you
4 worked on?

5 A It would have been Bruce DenUyl, Louis
6 Dudley. There was a declaration, so I don't know
7 if you'd call that a report, if you wanna do that.

8 Q Appreciate the distinction, but -- but
9 for the declaration, who was -- who was the
10 individual who --

11 A I be --

12 Q -- executed that?

13 A I believe it was Al Koch.

14 Q And is that -- is that another managing
15 director --

16 A It is.

17 Q -- at Alix Partners?

18 A Uh-huh.

19 Q Okay.

20 A That was related to General Motors.

21 Q I see. How many expert reports that have
22 gone out under the name Bruce DenUyl have you

1 participated in the drafting of?

2 A If it's twenty, then -- if it's twenty in
3 total, then Bruce is twelve, fifteen. I'm not --
4 I'm not sure.

5 Q Approximately twelve to fifteen --

6 A Some --

7 Q -- give or take?

8 A Something like that, yeah.

9 Q Okay. How about for Mr. Dudney?

10 A I think he would be the remainder, aside
11 from the declaration. Working with Kevin was
12 mostly restructuring work. There -- there may be
13 one other, but I -- I'm not recalling.

14 Q I see. And the -- speaking particularly
15 the reports that you worked on for -- for
16 Mr. DenUyl, what -- which -- which cases were
17 the -- did -- did those reports involve, if you can
18 recall as you sit here?

19 A Sure. There was a case called Iridium.

20 Q Say again.

21 A Iridium, I-R-I-D-I-U-M.

22 Q Uh-huh.

1 A Charter Communications.

2 Q Okay.

3 A A company called MSC, a company called
4 Hecla, a matter involving Bell South. There was
5 another one in California. I forget the acronym
6 that the company was. Was a marketing company.

7 Q Okay.

8 A Edison Brothers was another one.

9 Q You've -- you exhausted your memory?

10 A I mean I could sit here and maybe come up
11 with something if you wanna take the time to do
12 that, but that's -- that's what I recall right now.

13 Q Okay. You ever heard of a company called
14 Tousa Corporate?

15 A Uh-huh.

16 THE REPORTER: Your response?

17 THE WITNESS: I have, yes.

18 BY MR. WILLIAMS:

19 Q How have you heard of it?

20 A I believe there was a ruling out a day or
21 two ago.

22 Q In terms of what?

1 A Had to do with I think dispute between
2 the second lien holders and the unsecureds or
3 something like that. I wasn't involved in the
4 case.

5 Q Okay. You weren't involved in the case?

6 A No.

7 Q Was Alix Partners involved in the case?

8 A They were.

9 Q Do you know how Alix Partners is involved
10 in the case?

11 A I believe that we rendered a solvency
12 opinion in the case.

13 Q But you weren't involved in that opinion?

14 A Not at all.

15 Q Okay. Do you know who rendered the
16 solvency opinion?

17 A I think it may have been Bruce DenUyl.

18 Q You -- you indicated that you've been
19 involved in a number of reports under Mr. DenUyl's
20 name.

21 Was there ever a time when you were --
22 you participated in the drafting of a report

1 where -- where you disagreed with the conclusions
2 that are reflected in the final version of the
3 report, that you can recall?

4 A I have no idea.

5 Q You don't recall such a -- such a time?

6 A No.

7 Q Okay.

8 A I may have. I may not have. I -- I
9 don't recall. It's not my report.

10 Q As you sit here today, you don't recall
11 such a --

12 A I don't.

13 Q -- circumstance?

14 When you say it's not your report, you
15 mean it's under someone else's name or --

16 A Yeah, it's his opinion.

17 Q Okay.

18 A I mean he and I certainly differ on
19 opinion on things. I mean I don't -- I just don't
20 recall if he issued an expert report and I
21 disagreed with it. I don't think so. Not in major
22 substance, but I don't recall.

1 Q Okay. As you sit here, you don't recall
2 an instance in which you disagreed?

3 A I don't. I -- I don't.

4 Q With respect to the -- the twenty --
5 approximately twenty expert reports that you've
6 participated in the drafting in, can you -- and
7 this maybe somewhat an unfair question -- but can
8 you describe what -- what your role was in -- in
9 the preparation of those reports and, you know, or
10 indicate whether or not your role changed?

11 A Changed over time --

12 Q Yeah.

13 A -- or --

14 Q Or from report to report.

15 A Yeah, it's certainly different from
16 report to report.

17 Q Okay.

18 A I think the basics of what someone does
19 and -- and my role didn't change. You know, I was
20 responsible for a majority of the analytics,
21 whether -- whether it was me putting the numbers in
22 the spreadsheet or directing someone to do so and

1 reviewing them. I certainly would write a
2 background section and parts of the report that,
3 you know, he would change.

4 Q When you say analytics, what do you mean
5 by that?

6 A Well, if it was a valuation, it would be,
7 you know, the company financial statements, market
8 multiples, you know, that sort of thing.

9 Q Okay. And to your knowledge has the --
10 the expert reports that -- that you're indicating,
11 are those expert reports that were produced in the
12 context of -- of litigation or some other context?

13 A Yeah, primarily litigation. That's what
14 I thought we're talking about.

15 Q Right.

16 A If we're talking about valuation reports,
17 it's probably another fifty.

18 Q Okay. And valuation reports just sort of
19 beyond the scope of litigation another fifty?

20 A Correct.

21 Q Okay. And in what con -- well, strike
22 the question.

1 And of those fifty or so valuation
2 reports that -- that you've participated in other
3 context, how many of those have been under your
4 name?

5 A Typically those are issued under Alix
6 Partners' name or Pricewaterhouse's name as opposed
7 to an individual.

8 Q I see. So with respect to the ordinary
9 valuation opinion, would there be a -- the name of
10 an individual who was responsible for the
11 engagement that appeared on -- on the report?

12 A I think sometimes. Sometimes not.

13 Q Okay. With respect to the fifty or so
14 valuation reports that you worked on, has there
15 ever been a time when your name was listed on the
16 report, best of your recollection?

17 A I'm not sure. I've signed reports. I've
18 done reports. But I think I signed them as Alix
19 Partners.

20 Q You don't recall a circumstance in which
21 your name would be printed or signed onto a report,
22 you, Marc Brown?

1 A No, I understood the question. I'm
2 thinking about it.

3 Q Okay.

4 A Trying to give you my best recollection.

5 Q Sure.

6 A Yeah, I'm -- I'm thinking of one. I -- I
7 don't recall if the final one was under my name or
8 Alex Partners' name.

9 Q Which one you thinking of?

10 A It was the valuation of a airplane
11 manufacturing company.

12 Q Do you recall what the purpose of that
13 valuation report was?

14 A It was -- it had to do with either tax or
15 financial reporting.

16 Q And that -- that was at -- at Alix
17 Part -- when you --

18 A Correct.

19 Q -- were at Alix Partners?

20 Do you recall the name of the company?

21 A I do. I believe it's confidential.

22 Q So this was a report that was sort of

1 internal and shared only with -- well, who --

2 who -- can you say who retained you?

3 A Yeah, that's -- I'm not sure. So it was
4 an engagement that we worked on as a firm for other
5 reasons. And they called me in to assist them. I
6 often get calls from our other groups to help them
7 with valuations.

8 Q Okay.

9 A It's -- if it's important, I can check.
10 Let me know. But I -- I'm not sure. It strikes me
11 as something that's potentially confidential.

12 Q Okay. That's fair.

13 Do you recall when you did this report?

14 A It would've been within the last six
15 months.

16 Q Okay. I was asking you earlier about
17 your vitae, which appears in Exhibit 1 of Exhibit
18 Brown 2.

19 A Exhibit 1, yes.

20 Q Yes. And I'm going to ask you to turn to
21 the second page, under the heading selective
22 engagements.

1 A Second -- okay. Page 3 of the document?

2 Q Yes.

3 A Yeah.

4 Q And it talks about, the first bullet
5 point, a \$3.7 billion fraudulent conveyance
6 litigation, the Seventh District of New York?

7 A Okay. I was on the wrong page. I got
8 it.

9 Q Oh, sorry.

10 A That's the Iridium engagement.

11 Q Okay. And this is -- this is a report
12 that you worked on with Mr. DenUyl?

13 A Correct.

14 Q Do you know if Mr. DenUyl testified in
15 that case?

16 A He did.

17 Q And what was your role in -- in the
18 preparation of the report in that case?

19 A That was a large, frankly, landmark
20 decision of a fraudulent conveyance that involved a
21 satellite phone services provider. See the big
22 phones that went bankrupt. And the unsecured

1 creditors were alleging that a fraudulent
2 conveyance had occurred and that Motorola was to
3 blame for that.

4 We worked for counsel for Motorola. And
5 it was a project that went on for a number of
6 years. In fact when Bruce testified, I had left
7 the firm and was at the hedge fund. The report was
8 issued while I was still there. So it would have
9 been the same sort of things, you know. There were
10 a lot of documents. It was the sort of age before
11 digital documents so boxes upon boxes of documents,
12 reviewing depositions, analyzing the company.

13 It was a -- you know, there was a -- a
14 lot of materials I guess to look at. I mean it
15 was -- at the end of the day, it was a valuation of
16 the business.

17 Q What was your role in the valuation of --
18 in the production of the expert report?

19 A Similar to others. I was a director on
20 the in -- sort of what I would deem a manager. I
21 oversaw the process. You know, I would write
22 sections of the report. I would do or oversee the

1 analysis behind it.

2 Q Let me ask you to look at the fourth
3 bullet point where it talks about assessing the
4 value of a Latin American wireless telecom provider
5 for a purchase price dispute.

6 It states, Provided litigation support to
7 counsel and the testifying expert.

8 What does that -- what does that mean,
9 litigation support?

10 A Certain -- certain attorneys will ask you
11 what does this mean, you know, I don't understand
12 numbers, I don't understand revenue; I don't
13 understand profit.

14 Q I frequently ask those questions.

15 A Okay. So it's just sort of instructing
16 them and helping them through financial issues, if
17 you will.

18 Q Okay. And who was the -- the testifying
19 expert in that case?

20 A There were two I believe. Bruce DenUyl
21 and Louis Dudley.

22 Q Okay. And what was the name of that

1 case?

2 A I think it was Bell South versus Argenta
3 Finance. I think there was a longer title, but
4 that's the -- the gist of it.

5 Q Okay. And let me ask you to look at the
6 next page and the first bullet point where it talks
7 about valuing and assessing the solvency of \$21
8 billion U.S. cable company as part of a plan of
9 reorganization, confirmation dispute regarding the
10 reinstatement of a multibillion dollar prepetition
11 secured debt facility.

12 What -- what case was that?

13 A That was Charter Communications.

14 Q Okay. And what was your role in that
15 litigation?

16 A Probably similar to the Iridium
17 engagement.

18 Q Okay. And who was the testifying expert
19 in that case, if you recall?

20 A That would've been Bruce DenUyl.

21 Q And with that, Mr. Brown, we're going to
22 go off the record briefly, take a short break so

1 that the videographer can change the tape.

2 A Okay.

3 VIDEOGRAPHER: This concludes tape number
4 one in the video deposition of Marc Brown. The
5 time on the video is 11:05 a.m. We are off the
6 record.

7 (Recess)

8 VIDEOGRAPHER: This begins tape number
9 two in the video deposition of Marc Brown. The
10 time on the video is 11:23 a.m. We are on the
11 record.

12 BY MR. WILLIAMS:

13 Q Mr. Brown, I am going to continue my --
14 my questions with exhibit -- third page of Exhibit
15 1 to your --

16 A Okay.

17 Q -- vitae, which I believe is the page
18 that you have in front of you.

19 A Okay.

20 Q And I want to ask you about the sixth
21 bullet point that deals with analyzing issues of
22 fraudulent conveyance.

1 Do you see that part of the title?

2 A I do.

3 Q Okay. And reasonably equivalent value
4 related to an air cargo company, performed
5 valuation analysis to determine solvency at various
6 points in time, provided litigation support to
7 counsel as a testifying expert.

8 My question is what case was that?

9 A It was called Southern Air Transport.

10 Q Okay. And you did a valuation analysis
11 in that case?

12 A I was there -- was a different testifying
13 expert, but yeah I supported him.

14 Q Who was the testifying expert?

15 A It was Bruce DenUyl.

16 Q And to the extent that there was an
17 expert report in that case, is it fair to say that
18 it went out under Mr. DenUyl's name?

19 A Yes.

20 Q Because the -- the report in that case
21 went out under Mr. DenUyl's name, is it -- would
22 you agree with me that he had final say in the

1 opinion?

2 A Yes.

3 Q Okay. And is it the case that the only
4 time in which you've prepared an expert report in
5 federal court litigation in which you had final say
6 is -- is this case?

7 A That I've had final say?

8 Q Yes.

9 A Yes.

10 Q Let me ask you to go to the next page of
11 the document.

12 And I want to ask you a question about
13 the seventh bullet point down where it indicates
14 you are, Providing litigation support to the U.S.
15 Government related to its interests in litigation
16 trust established for the pursuit of a fraudulent
17 conveyance involving a chemical company.

18 What case is that?

19 A I'm not sure if we've been disclosed in
20 our role. So I'll answer if you want, but I don't
21 know if it's confidential or not.

22 Q Well, I'm not going to ask you to divulge

1 anything that's conditional.

2 Is that an ongoing engagement?

3 A It is. It's the -- it's the Tronox
4 litigation, T-R-O-N-O-X.

5 Q Okay. What kind of litigation is that?

6 A It's a fraudulent conveyance action.

7 Q And is that in federal court?

8 A Yes.

9 Q In -- in New York, or somewhere else?

10 A You know, I don't know. The trial's
11 actually going on as we speak. We were involved
12 sort of in a consulting role. Alix`Partners was
13 not in a testifying role, but we were involved
14 earlier in the case. I mean we have an ongoing
15 role. My part of it has been less in the last
16 couple months.

17 I think it's in New York. I think it's
18 probably Southern District of New York, which is I
19 think where the bankruptcy was, but I'm -- I'm just
20 not certain. The companies themselves involved are
21 in Texas and Oklahoma.

22 Q I see. And it indicates that the work

1 includes reviewing and commenting on multiple
2 testifying experts' analyses and conclusions on
3 valuing solvency?

4 A Yes.

5 Q Is it fair to say that your work didn't
6 include providing an expert report in that matter?

7 A No, it was basically telling the retained
8 experts, you know, is your work product good.

9 Q And were the retained experts, experts
10 from -- from Alix Partners?

11 A No.

12 Q I'm going to ask you to turn two more
13 pages. And what I want to ask you about is the
14 sixth bullet point from the top dealing with
15 calculated damages.

16 Do you see that?

17 A Uh-huh.

18 THE REPORTER: Your response?

19 THE WITNESS: Yes.

20 BY MR. WILLIAMS:

21 Q It says, Calculated damages and provided
22 litigation support as a part of an arbitration

1 regarding a European joint venture between a global
2 pharmaceutical company and a European pharma
3 company.

4 And did you produce a report in that --
5 in that arbitration?

6 A Lewis Dudney produced a report.

7 Q Okay. And that's -- and that's a
8 managing director of --

9 A Correct.

10 Q -- Alix Partners?

11 And what was your role in that retention?

12 A I had overall oversight of the project,
13 client interaction, the -- the analytics behind it,
14 part of drafting the report.

15 Q You indicated that as part of this
16 retention as -- in terms of leading your retention
17 in this case, inquiries were made in terms of
18 whether or not there was someone at Alix Partners
19 who might be interested in -- in the retention.

20 Was Mr. DenUyl consulted?

21 A How do you mean consulted?

22 Q Spoken to?

1 MS. LAMBRACOPOULOS: I ask by whom?

2 BY MR. WILLIAMS:

3 Q By anyone in connection with your
4 retention in this case?

5 A Yeah, he -- he may have been. I think
6 the call came in to one of our directors and
7 managing directors here in Washington. And I'm
8 sure they reached out to Bruce and Louis and some
9 others as well as me in terms of, you know,
10 interest and availability in taking on the
11 assignment.

12 Q Did Mr. DenUyl lack interest or
13 availability, to your knowledge?

14 A Yeah, he lacked availability.

15 Q Okay.

16 A He was fairly busy at the time.

17 Q Okay. He was too busy?

18 A Yes.

19 Q How about Mr. Dudney?

20 A Same. Mr. Dudney's in a trial right now.

21 Q So he --

22 A As we speak.

1 Q He was too busy?

2 A Both of them, yeah.

3 Q Anyone else who was consulted?

4 A I think I was the other person consulted.

5 Q You -- you weren't too busy, I take it?

6 A I had more flexibility in my schedule,
7 yes.

8 Q Is it fair to say that -- that this
9 retention is -- is the biggest retention you've
10 ever had?

11 A I don't understand the question.

12 Q Sure. You indicate that -- that you've
13 spent upwards of 200 hours on this engagement; is
14 that -- is that right?

15 A I think the high end of my range is 190.

16 Q Okay.

17 A My rough range, but --

18 Q Approximately 190?

19 A Approximately.

20 Q Have you ever had an engagement where you
21 were the senior person in which the firm generated
22 as much business as this case?

1 MS. LAMBRACOPOULOS: Objection. Form.

2 THE WITNESS: Possibly.

3 BY MR. WILLIAMS:

4 Q When?

5 A Currently. We have an ongoing project
6 that I can't disclose that I am part of the team
7 on. And, you know, part of the getting credit on
8 that is significantly larger than this.

9 Q I see. So other than your -- your
10 current engagement that you indicate began in
11 December; is that right?

12 A Which engagement?

13 Q The -- the engagement that you just
14 referred to.

15 A That's a different engagement.

16 Q Oh, when did the -- when did this -- this
17 other engagement begin?

18 A Maybe February.

19 Q February of 2012?

20 A 2012, yes.

21 Q Okay. When did this engagement, the
22 Mannion engagement, begin?

1 A The end of March, early April of 2012.

2 Q Okay. So maybe a month later?

3 A Roughly, sure.

4 Q And other than your -- your February of
5 2012 engagement, is this the largest engagement
6 that -- that you're you getting credit on, as you
7 put it?

8 A That we've actually been retained in?

9 Q Yes, sir.

10 A I'm not sure. I'm not sure.

11 MS. LAMBRACOPOULOS: Can I -- just a
12 clarifying question. I think you're asking two
13 separate questions, Dave. One is largest
14 engagement that they've been -- that -- that
15 Mr. Brown has been retained on. And I guess there
16 was a second question, the largest engagement for
17 which he's getting credit on.

18 MR. WILLIAMS: I meant to ask the second
19 question.

20 THE WITNESS: That I'm getting credit on?

21 BY MR. WILLIAMS:

22 Q Yes.

1 A I'm not sure. The way we get credit is
2 complicated.

3 Q Okay. Fair to say this is an important
4 case to you?

5 A I guess I'd say all my cases are
6 important. I mean I try to do a -- a good job for
7 any engagement of mine.

8 Q Sure. And that would be consistent with
9 this case?

10 A Yes.

11 Q Okay. And let me to turn -- I'm going to
12 ask you some questions about the -- 'the -- your
13 report here. And first I'm going to ask you to
14 look at page 3 of -- of the report.

15 A [Witness looked at document]. Okay.

16 Q And it's a summary of opinion.

17 And you say, Based on my analysis, it's
18 my opinion that the total value attributed to
19 Palisades' side pocket investments in World Health
20 on its NAV statements as of the valuation dates
21 appear reasonable.

22 Is that your opinion?

1 A Yes.

2 Q Do you have any other opinions in this
3 case?

4 A I mean this report was issued prior to
5 the issuance by Mr. Pump of two reports. So I -- I
6 could potentially have opinions on his reports but
7 in general that's my opinion.

8 Q Okay. In general, to the extent that you
9 had opinions in this case, did you endeavor to
10 reflect them in your report?

11 A Yeah, my report is reflective of my
12 opinions the date I signed -- signed it, yeah.

13 Q Okay. And were there any opinions that
14 you reached as of the date that you signed in your
15 report that you didn't include in your report?

16 A No.

17 Q Okay. Were there any analysis that you
18 performed as of the date of your opinion that --
19 that are not reflected in this report?

20 A What do you mean by analysis?

21 Q Any sort of examination, calculation, or
22 study?

1 A It's kind of a broad question.

2 Q Yes.

3 A You know, as you go through looking for
4 guideline companies, you -- you know, you have a
5 larger set of companies. And you say company X
6 makes sense, company Y doesn't. So I certainly did
7 that sort of exercise.

8 Q Any other exercises?

9 A There may have been. I mean nothing
10 substantial, I guess.

11 Q What other exercises can you recall?

12 A I'm not sure if I talk about what the
13 general economy was doing in here. I certainly
14 looked at some of those materials.

15 Q Any other analysis or exercises?

16 A I don't think so.

17 Q You don't recall any as you sit here
18 today?

19 A No.

20 Q Okay. What other companies did you look
21 at?

22 A I think it was a broad list at first.

1 And then we narrowed it down to sort of medical
2 staffing companies.

3 Q When you say a broad list, as list of --
4 can you -- can you ballpark the --

5 A You can do a screen and various databases
6 that says give me staffing companies. Manpower,
7 Inc.'s not the same kind of company as World Health
8 so you sort of exclude them.

9 Q And so -- so you -- would -- am I fair in
10 characterizing it as you took a broad section of
11 companies and excluded companies that weren't in
12 the same sort of business as World Health?

13 A Correct.

14 Q And what other steps did you take in --
15 in that -- in that analysis?

16 A Well, it's probably like a multi step
17 analysis. You sort of throw out the very obvious
18 ones and then you might get a larger set that might
19 have some potential to be relevant.

20 Q And with respect to the -- the ones who
21 might have some potential to be relevant, do you
22 recall approximately how many companies you

1 identified?

2 A Yeah, so some private ones showed up; but
3 public companies at the time, I think there was
4 four in total.

5 Q And then how did you eliminate any of
6 those companies?

7 A Sure. One -- one company was called On
8 Assignment. They were losing money and did some
9 things that were a little different than what World
10 Health did. And you couldn't develop profit
11 multiples on 'em and didn't -- didn't seem like a
12 relevant comp.

13 Q Didn't seem relevant because they were
14 losing money?

15 A Losing money and you couldn't get a
16 multiple because they had negative profits,
17 negative EBITDA.

18 Q And were there any similarities between
19 that company and World Health?

20 A There were some.

21 Q Which similarities do you recall?

22 A And they are generally -- they had five

1 or six segments of business, you know. Some
2 portion of that overlapped in terms of travel
3 nursing or per diem.

4 Q Do you recall any other similarities?

5 A No.

6 Q Okay. And what was the other company
7 that you were able to eliminate?

8 A I think it was called Medical Staffing
9 Network.

10 Q Okay. And why did you eliminate them?

11 A They actually had a very high EBITDA
12 multiple, 20, 30-something, times EBITDA, which
13 seemed like an outlier.

14 Q Okay. And was that the only reason you
15 eliminated that company?

16 A They also weren't a -- as diversified. I
17 think they operated in much fewer states than World
18 Health did.

19 Q And was that -- were those the only
20 reasons that you eliminated --

21 A There may have been others. Those --
22 that's what comes to mind.

1 Q Okay. And then the other two companies
2 you didn't eliminate; is that right?

3 A Yeah, those are what's in my report.

4 Q You say the total value attributed to
5 Palisades' side pocket investments in World Health
6 and its NAV statement as of valudation -- valuation
7 dates appear reasonable.

8 Is it your opinion that the valuations of
9 the side pocket investments in World Health in the
10 Palisades' NAV statements are accurate?

11 A I wasn't asked to form that opinion.

12 Q Okay. But is it your opinion that they
13 were accurate?

14 A I don't have an opinion.

15 Q You don't have an opinion one way or the
16 other?

17 A I wasn't asked to determine their
18 accuracy.

19 Q I understand you weren't asked to, but my
20 question is do you have an opinion?

21 A My opinion is they appear reasonable.

22 Q I understand. But -- but my question is

1 do you have an opinion as to whether or not they're
2 accurate?

3 A I don't have an opinion.

4 Q You don't have an opinion one way or the
5 other as to whether or not they're accurate?

6 A It's not what I was asked to do.

7 Q And because it wasn't what you were asked
8 to do, you don't have an opinion one way or the
9 other as to whether or not they're accurate?

10 A I don't.

11 Q You've conducted a number of valuations
12 in your career; is that fair?

13 A Probably more than 150.

14 Q Okay. And as part of conducting a
15 valuation purpose generally is to figure out how
16 much something is worth; is that fair?

17 A That is the usual purpose, yes.

18 Q Okay. In connection with this retention,
19 did you come to any -- based on your experience,
20 did you come to any opinion as to how much the
21 relevant assets were worth?

22 A Can you rephrase the question?

1 Q Yeah.

2 Did you come to any opinion or
3 conclusion, based on your expertise, as to whether
4 or not the side -- as to what the value of the side
5 pocket assets were?

6 A Yeah, well, maybe I should just sort of
7 reiterate what I was engaged to do. And it was to
8 look at the side pocket investment in World Health
9 and how it was marked on the books of Palisades'
10 master fund at the time of the three valuation
11 dates, and, you know, does this seem reasonable,
12 were they off base, were they, you know, that --
13 that was what I was asked to do so that's what I
14 did.

15 Did I -- did I look at it and say it
16 should be a penny more or a penny less? No.

17 Q Well, would it be helpful to -- to -- to
18 the analysis that you are -- that you're -- that
19 you're referring to to calculate how much the
20 assets were worth?

21 A I did. That's -- that's -- if you wanna
22 turn to the part -- my Exhibit 5-2 and 5-3, that's

1 where I sort of walk through the math. And I

2 discuss it starting on I guess page 11.

3 Q Okay. Starting on page 11, you calculate
4 how much the side pocket assets were worth?

5 A I do my -- I start talking about my
6 valuations as to World Health.

7 Q Right. But my question is did you
8 calculate how much the assets were worth?

9 A Yeah, I tested the value of World Health.

10 Q What does that mean, you tested the value
11 of World Health?

12 A It means I looked at a range of values,
13 which are in Exhibit I think 5-1 of my report, the
14 summary of it. And again, back to the original
15 reason I was retained was the managers put a value
16 on the assets in the side pocket. The allegations
17 I guess are that it's inflated. And I was asked to
18 say: In your opinion do these values appear
19 reasonable? And that's what I did.

20 Q And then that -- that's exactly how it
21 was explained to you, what you were supposed to do,
22 to opine as to whether or not they were reasonable?

1 A Yes. I mean I -- I might be paraphrasing
2 a little bit but that's -- that was what I was
3 retained to -- to opine on.

4 Q And did you undertake any analysis to
5 determine -- putting aside the question of
6 reasonableness -- what the accurate value of -- of
7 the -- of the various World Health assets was as of
8 the valuation dates?

9 A I guess I don't understand your -- your
10 question about accurate value. I mean you've asked
11 it four or five times now, so maybe it's -- I -- I
12 just don't understand what you're asking.

13 Q You don't understand what accurate value
14 of World Health assets means?

15 A I -- I don't.

16 Q Okay.

17 A I mean are you saying -- are you saying
18 that was the value, the only value it could have
19 been at the time?

20 Q I'm asking did you, as a result of your
21 valuation expertise, calculate how much the assets
22 were worth as of the valuation date?

1 A As I stated, I tested the value. I took
2 a look at -- they had a value of X. And I looked
3 to see if it was reasonable. I -- I think maybe --
4 maybe the misunderstanding is, you know, if anyone
5 tells you that a company like this is worth
6 exactly, you know, down to the penny something,
7 that's -- there's some judgment in any valuation.

8 Q Okay. And did you apply your judgment
9 to -- to calculate or to determine what you thought
10 the value --

11 A Absolutely.

12 THE REPORTER: I didn't hear all the
13 question. To determine?

14 BY MR. WILLIAMS:

15 Q Did you use your judgment to calculate or
16 determine what you believe the valuation should be?

17 A I looked at it, yes.

18 Q You looked at it?

19 A Yeah, I mean that's what my analysis
20 entailed.

21 Q And let's talk about your analysis, on
22 page -- beginning at page 11.

1 A Uh-huh.

2 Q You there?

3 A I am.

4 Q You say as of each of the valuation dates
5 you tested the reasonableness of the aggregate
6 values attributed to the World Health securities on
7 the NAV statements.

8 Why did you test the reasonableness of
9 the aggregate values?

10 A Well, I guess as I understood the
11 allegations, it was -- you know, and through part
12 of reading the depositions and that sort of thing,
13 you know, the discussion appeared to be that the --
14 the portfolio was inflated, all right, the total
15 package of assets were inflated and that they were
16 earning excess management fees on that total value.
17 So that's why I looked at it.

18 Q Did you test the value of the individual
19 assets?

20 A Well, I tested whether they were covered
21 by the overall enterprise value of World Health.

22 Q What's that mean, covered?

1 A I guess it means when you have a company
2 that has debt in the capital structure as World
3 Health did, that's in a situation that they were
4 in, sort of a restructuring mode, it means do I
5 have enough value to get paid on the securities.
6 It is a -- it's -- it's how you do restructuring
7 valuations.

8 Q Would you agree with me that a valuation
9 of an asset is something that is how much a willing
10 buyer would be willing to pay for the asset?

11 A No. I'd say it's a willing buyer and a
12 willing seller.

13 Q Okay. You would agree that the value of
14 an asset as of a particular date is how much a
15 willing buyer would be willing to pay a willing
16 seller for the asset?

17 A Yeah, you gotta have both, a willing
18 buyer and a willing seller. That's a -- that's a
19 specific fair market value definition that you're
20 quoting, sort of.

21 Q Would you agree that for say a publicly
22 traded security that the -- the value of the

1 security is how much the security trades for?

2 A Sure. You've got willing buyers and
3 sellers of IBM stock every day.

4 Q How about a -- a bond? Would you say
5 that a -- the value of a bond is how much a -- a
6 willing buyer will be willing to pay for -- for the
7 bond from a willing seller?

8 A Under that hypothetical, that you have a
9 willing buyer and a willing seller on each side of
10 the bond transaction? Sure.

11 Q And you talk about testing the total
12 enterprise value of World Health.

13 What's -- what's enterprise value?

14 A It's -- it's like the value of the
15 assets. It's one way to think about it. The other
16 way is it's sort of -- I mean that's what it is.
17 It's a value of an entire enterprise. So typically
18 done from the -- the cash flows of the business,
19 you know, not -- you've got an enterprise value.
20 Then it might have debt components. It might have
21 equity components. But it's -- it's the total
22 company.

1 Q Total value of the company, all of its
2 assets?

3 A Correct.

4 Q And what's the relevance of enterprise
5 value to your analysis?

6 A Well, it -- it forms the basis of my
7 valuation test.

8 Q And describe your valuation test.

9 A You want me to walk through the analysis
10 or --

11 Q Yeah.

12 A Sure. So I, you know, was asked to look
13 at the reasonableness of -- of the -- of the
14 portfolio of value. And as part of that, I looked
15 at the enterprise value. I looked at two different
16 indicia of value, the first being the guideline
17 company approach, which is a standard valuation
18 methodology. And I developed market multiples
19 based on publicly traded companies. I applied
20 those multiples to an estimate of World Health's,
21 you know, performance, and developed an enterprise
22 value.

1 Q How does the enterprise value of World
2 Health relate to the value of the Palisades World
3 Health assets?

4 A Which assets?

5 Q The side pocket assets.

6 A It -- it relates because that's how you
7 would determine if they're covered or not.

8 Q What do you mean covered?

9 A To reiterate, it's -- it's do I have
10 enough value for this to get paid back?

11 Q Okay. And so is your assumption that if
12 World Health has enough value to pay back whatever
13 they owed to -- to Palisades, that the assets are
14 valued correctly?

15 A That's not my opinion. My opinion is was
16 the -- the total portfolio value reasonable? And I
17 looked at the enterprise value and the standard
18 restructuring valuation and said there is more than
19 enough coverage, such that those individual assets,
20 that portfolio of assets, is covered.

21 Q How is that relevant to the -- what the
22 value of the portfolio is, whether or not the

1 assets are covered?

2 A I thought I answered the question but
3 I'll -- I'll try to phrase it differently. When --
4 when you're working a restructuring, okay, which is
5 what this was, effectively, one -- you know, you do
6 couple things early on in the restructuring.

7 And then at some point when you start
8 thinking about value, you say, all right, the
9 debt's a hundred million dollars, this business is
10 worth 70, you're not covered. Vice versa: The
11 debts a hundred million dollars, this business is
12 worth \$150 million, you're covered, 'you -- your
13 bondholders are -- are good, your equity holders
14 are good, 'cause there's enough left over for the
15 equity in that -- in that scenario.

16 Q So in a scenario where the bondholders
17 are covered, that means that they're going to get
18 paid on their bonds?

19 A Correct.

20 Q Necessarily?

21 A Yes. In a restructuring scenario.

22 Q And what do you mean a -- a restructuring

1 scenario?

2 A So in a scenario such as we had here
3 where you had three debt instruments, two of which
4 were due and owing, and the company was in the
5 process of either exchanging those securities or
6 selling the company, those debts need to get paid
7 off in order for that to move forward.

8 Q I see. So in the context of a company
9 sort of being -- being required to -- to satisfy
10 its debts in a restructuring, the fact that the
11 company had enough assets means that the -- the
12 debt -- the debtholder's being paid; is that -- is
13 that fair?

14 A Yeah, that's what you test for.

15 Q Okay. And in determining whether or not
16 the company had enough assets, you calculated
17 its -- its enterprise value; is that right?

18 A Yes.

19 Q And in order to calculate -- in order to
20 perform your test, you used what you say -- called
21 a guideline approach?

22 A Yes.

1 Q What's a guideline approach?

2 A It's looking at publically traded
3 companies that are similar guidelines to the value
4 of your subject company.

5 Q Okay. And which companies did you use
6 as -- as guideline companies?

7 A A company called Cross Country, another
8 one called AMN Healthcare.

9 Q And do you believe that these companies
10 were -- were similar to World Health?

11 A Yeah, similar.

12 Q Okay. Similar in what respects, if you
13 recall?

14 A All three of them have full coverage in
15 the U.S. They have similar services, allied
16 staffing, travel nurses, per diem nurses. I think
17 Cross Country doesn't do a lot of the doctor or the
18 locum tenens, but generally similar services.

19 Q Okay. Let me ask you to look at page 13
20 of your report. You talk about World Health
21 financial metrics.

22 Do you see that part of the document?

1 A I do.

2 Q And are you familiar with this part of
3 the document?

4 A I -- I wrote it, yes.

5 Q Okay. And you -- and you -- so you talk
6 about the latest available World Health
7 comprehensive financial report was its first
8 quarter 2005 10-QSB SEC filing.

9 My question to you is do you have reason
10 to believe that that report was accurate?

11 A I have reason to believe it probably
12 wasn't fully accurate.

13 Q And what's your reason to believe that?

14 A World Health came out in the end of
15 August with a series of 8-K filings that talked
16 about some of the accounting problems they had.

17 Q And in what respect was -- were the
18 previous filings inaccurate?

19 A It wasn't really known at the time.

20 Q Was it ever known?

21 A I don't know that it fully was. Sort of
22 outside the time frame I looked at. But I think

1 more clarity came out years later. But I don't --

2 I don't think there was full clarity.

3 Q You don't think there was ever full
4 clarity?

5 A I -- I don't. I -- I don't --

6 Q As far as you know?

7 A -- remember spe -- as far as I know.

8 Q Okay. And you talk about World Health
9 rapidly acquiring companies throughout 2003 and
10 2004, including three acquisitions in the fourth
11 quarter of 2004 alone. Its reported trailing 12
12 months revenue and earnings before interest, taxes,
13 depreciation, amortization figures were not
14 indicative of its current operations as of the
15 valuation dates.

16 What does that mean?

17 A It means when a company is growing
18 rapidly, whether it's through acquisitions in
19 particular or just let's say it's a brand new
20 technology -- you know, Google, you know, six
21 months after it started is very different than the
22 first month -- that you need to be careful in

1 looking at historical results as a -- you know, as
2 indicative of -- of what the business is worth.

3 So in this case, because they did so many
4 acquisitions in 2004, their 2004 and even their
5 trailing 12 at March of '05 doesn't relet -- just
6 the way accounting works, doesn't reflect the full,
7 you know, revenues and cash flows of those
8 acquisitions. So they paid for them so it'll be on
9 the balance sheet, the debt they issued in order to
10 pay for it'll be there. But the -- the full
11 revenues and cash flows aren't in the financials.

12 Q I see. And in the next paragraph you
13 talk about, Due to the both the observed growth and
14 World Health's -- World Health's revenue in the
15 first quarter of 2005 and the expectation of
16 significant further growth in the future, simply
17 applying market valuation multiples to World
18 Health's latest publicly reported 12-month figure
19 would underestimate its enterprise value.

20 What -- what's your basis of that?

21 A It's what I just spoke to.

22 Q Okay. Because of the -- the new and

1 apparently increasing business?

2 A Yes. You purchase a business. And it's
3 full revenue is not reflected yet in your
4 financials. It won't be until a year from the day
5 that you acquired it.

6 Q Okay. And so what do you -- what do
7 you -- what -- on your analysis on page 14 here, at
8 the -- at the -- the end of page 14 you talk about,
9 again, how the -- the 12-month trailing EBITDA of
10 6.4 million was likely in -- indicative --

11 A Uh-huh.

12 Q -- of what one could reasonably expect
13 the company to achieve over the course of 2005
14 given its recent acquisitions and level of growth
15 in its 2005 earnings.

16 Do you know what the actual final numbers
17 for 2005 were?

18 A I don't. I don't think they were
19 available at the time that I did my analysis in
20 terms of August, September, and October 2005.

21 Q So with respect to the assumptions for
22 what World Health's revenues and -- and EBITDA for

1 2005 would -- would be, you -- is there any way to
2 test those assumptions?

3 A Well, I mean there's a couple ways. One
4 is they're very conservative assumptions. And I
5 guess the second is, you know, Houlihan Lokey had
6 materials out there that showed an EBITDA of much
7 higher than I utilized, on a trailing 12 basis as
8 of 9/30.

9 Q Okay. And -- and what documents were
10 those?

11 A They were, you know, basically -- I think
12 in the testimony, you know, Mannion and Reckless
13 called teasers. There are sale documents, you
14 know, here's what Parker does, here's what World
15 Health Staffing, here's what JC Nationwide does,
16 Financial Metrics, those sorts of things.

17 Q And these are documents you reviewed?

18 A Yes. They're on the list.

19 Q Okay. And these documents indicated
20 revenues for 2005 of World Health of how much?

21 A I don't recall what the revenues were. I
22 recall that it indicated. And it was three

1 separate parts that you had to add together. You
2 know, it was Parker, it was JC Nationwide, and it
3 was World Health Staffing. It was some -- it was
4 an EBITDA of like 9.4 million versus the, you know,
5 7 one to 8 five that I used.

6 Q Okay. So 9.4?

7 A 9.4.

8 Q I'm going to ask you to turn to page 16.
9 And it appears to be an analysis that -- that you
10 are undertaking, talking about in reference to
11 Exhibits 5-2 and 5-3.

12 What are you doing here? Can you explain
13 that to me?

14 A Yeah, this is the valuation test under
15 the guideline approach.

16 Q Okay. And --

17 A So it's -- in the report I talk about
18 table 8. I show you sort of the summary of it and
19 then, you know, the details back in the exhibit.

20 Q Okay. And -- and you state that the --
21 as of the valuation dates, the market valued the
22 guideline companies, AMN and Cross Country and an

1 enterprise value of approximately 0.9 times
2 trailing 12 months revenue, and between 14.1 and
3 14.6 times trailing 12 months reported EBITDA.

4 And so with respect to the -- the
5 companies that you're comparing World Health to,
6 calculating the valuation as of the trailing 12
7 months revenue?

8 A Yeah, I think it's at -- you know,
9 whatever they report at the time, which -- in June
10 30. So if you're looking at it at August 31, those
11 are the results that they've got.

12 Q And also a multiple of trailing 12 months
13 reporting EBITDA?

14 A Correct.

15 Q And did you use the reported -- did you
16 use the trailing 12 months revenue for World
17 Health?

18 A Trailing 12 months revenue? No, I
19 actually used a -- a pro forma 2004 number, which
20 is probably a lot lower than where they were at.

21 Q But you didn't use a trailing 12 months
22 revenue for World Health?

1 A The data wasn't available.

2 Q You didn't use the trailing 12 months
3 EBITDA for World Health?

4 A Same issue: The data wasn't available.

5 Q Okay. Do you know why the data wasn't
6 available?

7 A They hadn't issued their Q-2 results.

8 Q And why was that?

9 A Because of some of the issues of the
10 company.

11 Q Okay. And were there similar issues at
12 AMN?

13 A Similar?

14 Q Issues in terms of lack of reliability of
15 financial statements?

16 A Not that I'm aware of.

17 Q Were there similar issues at Cross
18 Country?

19 A Not that I'm aware of.

20 Q Does that factor in your analysis?

21 A Sure.

22 Q Okay. How -- how did it factor in your

1 analysis?

2 A Well, I guess it factored in because --
3 ignoring for a minute the discounts that I took to
4 the actual revenue in EBITDA of World Health, I
5 discounted the value derived from those two
6 companies.

7 Q Why?

8 A Because World Health was having some
9 issues.

10 Q Then how do you know how much to
11 discount?

12 A How do I know how much to discount?
13 There's a lot of factors that go into it. But
14 it -- it's essentially a -- a judgment call.

15 Q How much did you discount it?

16 A 33 percent.

17 Q And what's -- what's the basis of that
18 number?

19 A It seemed doing a reasonable test. And I
20 think it's good to understand that the ultimate
21 discount is more like 65 percent. It's a fairly
22 significant discount to what a -- a healthy,

1 untroubled World Health could have been worth. I
2 mean the day before the announcement it was \$203
3 million. I'm saying it's -- you know, the test
4 range is 76 to 86, 60 percent less.

5 Q By what standard do you calculate the
6 discount?

7 A By what standard?

8 Q Yes. If any.

9 A I don't understand the question.

10 Q Is there -- are there -- are there
11 guidelines that -- that inform how valuations
12 appear to be done?

13 A Other guidelines?

14 Q Yes.

15 A There's certainly guidelines in some
16 instances.

17 Q What are the guidelines?

18 A You know, for tax purposes, there's
19 Revenue Ruling 5960, which gets to that fair market
20 value definition you were talking about before.
21 There's -- there's some other guidelines in the
22 industry.

1 Q Can you -- are you familiar with them?

2 A Yeah, I mean there -- there's discourse
3 on fair value, depending on your jurisdiction and
4 your time frame. So currently, there's something
5 called ASC820, which used to be called FAS 157,
6 that speaks to fair value. That's all sort of
7 after the fact. That came out after, you know, the
8 time period at issue here.

9 Q Any other standards?

10 A Yeah, I mean there's similar standards
11 for international financial reporting. There's
12 general industry practice. I mean, you know, like
13 I said, I had training at Pricewaterhouse. There's
14 books. You read books. You -- you do these sorts
15 of things. You review other people's valuations
16 over the years.

17 Q And are any of the standards referenced
18 in your report?

19 A Well, I didn't -- there's no standards.
20 I mean there's guidelines but there's no standards.

21 Q Is -- is the concept of fair value
22 mentioned anywhere in your report?

1 A I'm not sure if it is or not.

2 Q You don't -- as you sit here today, you
3 don't recall it being mentioned?

4 A I -- I don't recall.

5 Q Okay. And you indicated the discount of
6 33 percent was reasonable given that where -- where
7 World Health had been prior to August of 2005.

8 Am I -- am I recalling that testimony?

9 A Prior to August, no.

10 Q Okay.

11 A I'm not looking at it prior to August
12 2005.

13 Q Okay. Well, you indicated that you'd
14 thought the 33 percent discount was -- was fair and
15 reasonable, right?

16 A Yeah, it's reasonable, right.

17 Q Okay. Are you aware of --

18 A It's conservative.

19 Q It's conservative.

20 Are you aware of how much World Health's
21 publically traded stock price fell after the -- the
22 August disclosures of potential impropriety?

1 A Yes.

2 Q How much did it fall?

3 A It's probably around \$3. And by the end
4 of August it was 22 cents.

5 Q Would you agree with me it fell in the
6 neighborhood of 90 percent?

7 A Yeah, that's probably about right.

8 Q Why wouldn't you apply a 90 percent
9 discount?

10 A It's not how it works.

11 Q Why?

12 A Because it's an enterprise value. You're
13 talking about the bottom piece of a levered capital
14 structure. It -- it will move more -- in a more
15 volatile fashion than -- than -- it's not the same
16 as a discount that you'd apply to -- to value.

17 Q Why?

18 A Well, it's different math, different
19 concepts.

20 Q Okay. Would you agree with me that the
21 stock price of a company is -- is indicative of how
22 much a company's worth?

1 A Sure.

2 Q Okay.

3 A That's why I talk about it in here.

4 Q What do you say about it?

5 A Well, if you turn to page 17, I talk
6 about the public market approach.

7 Q Okay.

8 A And I talk about what the stock price
9 was, and given the debt at the time what that
10 implies for an enterprise value, and how that's an
11 indicia of value. And it's also Exhibit 5.5 to my
12 report.

13 Q Okay. Let's look at Exhibit 5.5.

14 A Okay.

15 Q And you indicate that between -- in
16 Exhibit 5.5, you indicate that between August 15th
17 of 2005 and August 31st of 2005, the market
18 capitalization of World Health goes from
19 approximately 162 million to approximately
20 17.3 million, correct?

21 A Yes.

22 Q How does the market capitalization as of

1 August 31st of 2005 of World Health compare to
2 the -- the companies that -- that you deem to be
3 comparable?

4 A How does the market cap?

5 Q Yeah.

6 A It's smaller.

7 Q Significantly smaller?

8 A Yeah, it's a distress situation.

9 Q Is that relevant to whether or not those
10 two companies are comparable, in your opinion?

11 A Well, that's why I applied a 33 percent
12 discount.

13 Q I see. And was the market capitalization
14 in the order of 33 percent smaller for World
15 Health?

16 A No. But it's -- that's not really how it
17 works.

18 Q Well, where does the 33 percent come
19 from?

20 A It comes from my experience in dealing
21 with distressed companies and restructurings. It's
22 actual transactions. It's actually a higher

110

1 discount than I've ever applied or seen applied.

2 Q In what case did you apply a 33 percent
3 discount for some -- any discount to the -- the
4 value of a company?

5 A When I looked at the General Motors
6 global liquidation analysis -- and that's a
7 liquidation analysis -- there were some --

8 (Interruption)

9 MS. LAMBRACOPOULOS: Pat, not here.
10 Can we go off the record for a minute?

11 VIDEOGRAPHER: We're going off the
12 record. The time on the video is 12:11 p.m.

13 (Discussion off the record)

14 THE WITNESS: We're back on the record.
15 The time on the video is 12:11 p.m.

16 BY MR. WILLIAMS:

17 Q I'm sorry, you -- you were talking about
18 General Motors?

19 A Yes. So you asked where I've applied
20 discounts. I believe I applied a discount in that
21 instance.

22 Q What did you apply a discount to in that

1 instance?

2 A The EBITDA of their Latin American
3 operations.

4 Q And in what context?

5 A It was in the context of so the way a
6 bankruptcy works is you -- however you're going to
7 come out of bankruptcy, out of a Chapter 11,
8 whether it's a sale of the business or a
9 reorganization, you have to pass what's called the
10 best interest test, which means the creditors would
11 be better off under that scenerio than if you just
12 liquidated the business. So I was asked to look at
13 the liquidation value of General Motors for the
14 best interest test.

15 Q And so in -- in evaluating the litigation
16 value, how was the discount relevant?

17 A Well, you had a bankruptcy in North
18 American of the North American assets. You did not
19 have the Latin Americans or the Asian operations
20 operating the bankruptcy. So the idea was could
21 they stand alone if GM disappeared, would its
22 operations globally be able to survive.

1 A lot of people talked about it, yes, but
2 we assumed they'd be sold at a significant, you
3 know, distressed value from what they were actually
4 worth, you know, under that scenario.

5 Q You assumed that the assets would be sold
6 at a significant --

7 A The businesses, right.

8 THE REPORTER: I didn't get all the
9 question. You assumed that the assets --

10 BY MR. WILLIAMS:

11 Q -- the assets would be sold at a
12 significant distressed value?

13 A Yes.

14 Q Okay. In what context did you apply the
15 discount?

16 I'm sorry I interrupted you.

17 A I applied it to their EBITDA as part of a
18 market approach.

19 Q In terms of trying to calculate what?

20 A The value of -- of these operations and
21 a -- a liquidation.

22 THE REPORTER: The value of what?

1 THE WITNESS: The assets and a
2 liquidation.

3 BY MR. WILLIAMS:

4 Q So you were calculating the value of
5 assets?

6 A Yes.

7 Q Okay.

8 A Those specific assets. I mean there were
9 different pieces that were done differently. The
10 North American operations were done differently.

11 It was what could I sell a, you know, a
12 hundred-year-old factory with environmental
13 problems for?

14 Q So in that circumstance, you were
15 calculating how much the assets were worth?

16 A In what circumstance?

17 Q In the General Motors circumstances
18 you're referring?

19 A Yes.

20 Q Okay. And --

21 A Total assets of General Motors of
22 those -- of the Latin American operations, Daewoo

1 and South Korea.

2 Q And in doing that, you valued each asset?

3 A Each business, yeah.

4 Q Yeah.

5 A So as a subset, you know, the Latin

6 American business of General Motors.

7 Q Okay. What's the value of the side
8 pocket assets of Palisades?

9 What's the value of the side pocket World
10 Health assets of Palisades as of August 31st, 2005?

11 A Of the total side pocket?

12 Q Yeah. What's the value?

13 A I think it was listed at about
14 15.35 million.

15 Q You agree that that was the value?

16 A I tested whether it was reasonable.

17 Q And you tested whether it was reasonable,
18 but do you agree that was the value?

19 A Well, that's -- that's what the documents
20 show, yes.

21 Q And you agree with the documents?

22 A I -- I don't know. Yeah, they were

1 produced in the case. They seemed to be the -- the
2 right documents. I'm not sure I'm understanding
3 your question.

4 Q You agree that the value was correct?

5 A I -- again, I tested the reasonableness
6 of that value.

7 Q I understand.

8 And with respect to the Exhibit Number
9 5-5, you have at the bottom of the column for
10 8/15/2005 --

11 A Bear with me a second.

12 Q I'm sorry.

13 A Okay. 5-5.

14 Q Yeah. And at the bottom of the column
15 where it's 8/15/2005, there's a market -- at the
16 bottom there's a market deprived -- derived
17 enterprise value.

18 Do you see that?

19 A Correct.

20 Q What is that?

21 A That's taking the stock price of 346 a
22 share times the shares of 46.88 million.

1 Q Uh-huh.

2 A You get a market capitalization. That's
3 the equity. And then you add on the debt.

4 Q Why do you add the debt?

5 A 'Cause that's how you calculated
6 enterprise here.

7 Q So by adding on the debt, you're assuming
8 that the company has the ability to pay the debt?

9 A Yeah, that's what the market was
10 assuming.

11 Q Why do you believe that?

12 A 'Cause you've got a publicly traded stock
13 price at 346 a share with a lot of stock value.

14 Q Okay. And was the market aware of the
15 company's debt?

16 A Well, that's the debt I used, what they
17 were aware of.

18 Q I see. I see. As of March 31st?

19 A Uh-huh.

20 Q I see.

21 THE REPORTER: Your response?

22 THE WITNESS: Yes, as of March 31st, or

1 whenever they issued the financials, probably May,
2 they would've come out with their 10-QSB.

3 BY MR. WILLIAMS:

4 Q And where does this 12.8 million,
5 where -- where's that come from?

6 A That is a Series A convertible preferred
7 stock. That's from the financial statements as
8 well.

9 Q From which financial statements?

10 A Well, I don't know that'll show up on the
11 March 31 exact of that number, due to accounting,
12 the way they account for things like that. You
13 have to go back to the notes of -- probably the
14 notes of the December -- or the 2004 10-K. They
15 did the transaction where they issued those
16 securities.

17 Q And why do you believe the market was
18 aware of that transaction?

19 A Because it's in their SEC filings.

20 Q Okay. Which SEC filing?

21 A 2004 10-K.

22 Q In the 10-K. Okay.

1 And as you're go on to August --

2 MS. LAMBRAKOPOULOS: I'm sorry, was that
3 a "yes" or "no"?

4 THE WITNESS: Yes.

5 BY MR. WILLIAMS:

6 Q -- August 31st, 2005, you appear to be
7 adding 22 million in convertible debentures, 2.5
8 million in additional cap source debt, and 4
9 million in terms of a promissory note.

10 Do you see that?

11 A I do.

12 Q And where do you get these figures from?

13 A Various 8-K filings from World Health
14 that came out prior to 8/31.

15 Q Okay.

16 A And you'll note that the -- the
17 convertible preferred comes off the 12.8.

18 Q All right. And so -- and so -- so just
19 so I understand what -- what you've explained about
20 enterprise value, the assumption is that the market
21 believes that the company's value is whatever the
22 company's worth after having paid back all its

1 debt?

2 A No. It's -- an enterprise value is the
3 value of the total assets. One way you can get to
4 that value is by looking at the enterprise value,
5 which once you have the value of the assets, let's
6 say it's \$50 million, if it has 20 million of debt,
7 then the remainder, the 30, is what flows to
8 equity.

9 So this is sort of looking at it the
10 reverse way. The -- the equity is out there at 162
11 million. They know there's 53 million of debt. So
12 they applied enterprise values, you know, of 215 or
13 so.

14 Q I see. I see what you're saying.

15 Let me ask you to turn to -- turn to page
16 8.

17 A Okay.

18 Q I want you -- you're describing the
19 various World Health assets that are there in the
20 side pocket, at the top, the top four bullet
21 points.

22 Do you find that part of the document?

1 A Yes, I see it.

2 Q And I'm going to ask you about the
3 restricted common stock.

4 A Okay.

5 Q And it says, As of August 31st, 2005,
6 Palisades held 950,000 shares of World Health
7 restricted common stock in the side pocket.

8 And you talk about the cost basis. And
9 you say it was carried on Palisades' NAV statement
10 at a value of 1,894,921 and 67 cents. And then in
11 parentheses, \$1.99 a share, as of August 31st,
12 2005.

13 In your opinion, do you test the
14 reasonableness of that particular value?

15 A Of that particular value? No. I looked
16 at it in totality.

17 Q So you didn't test the reasonableness of
18 restricted common stock?

19 A Not on a specific basis.

20 Q Would you agree with me that if the stock
21 price for World Health as of August 31st, 2005, was
22 22 cents a share, the value of that restricted

1 stock is too high?

2 A If you're looking at it as just
3 restricted stock, sure.

4 Q Do you have any reason to believe that as
5 of August 31st, 2005, there was anything but
6 restricted stock.

7 A My understanding is there were
8 significant discussions and negotiations about
9 exchanging it for some other sort of security,
10 more -- more senior to it.

11 Q Assuming that there were discussions, do
12 you have any reason to believe that as of August
13 31st, 2005, that restricted stock was anything but
14 a restricted stock?

15 A Beyond the expectations that it would be
16 converted to something else, no.

17 Q Yeah, future expectations?

18 A Based on current discussions.

19 Q Well, I'm sorry, what was your answer?

20 A I said -- you said future expectations.
21 And I said future expect -- I completed your
22 thought I guess. I don't know if I can do that.

1 But future expectations based on contemporaneous
2 discussions.

3 Q Okay. Future expectations based on
4 contemporaneous discussions of what?

5 A Of an exchange of securities.

6 Q Okay. As of August 31st, 2005, had there
7 been an exchange of securities?

8 A No.

9 Q So then you would agree with me that as
10 of August 31st, 2005, World Health restricted stock
11 was World Health restricted stock?

12 A I -- I would agree with that, yeah.

13 Q Okay. You'd agree with me that World
14 Health restricted stock, as a general -- as a --
15 would you agree with me as a general matter that
16 restricted stock is worth less than freely tradable
17 stock?

18 A As a general matter, yes.

19 Q Okay. Would you agree with me that World
20 Health restricted stock is worth less than World
21 Health unrestricted stock?

22 MS. LAMBRACOPOULOS: Objection. Form.

1 Timing.

2 BY MR. WILLIAMS:

3 Q As of August 31st, 2005?

4 A What I would say is I think what you're
5 asking, a hypothetically yes, the common -- the
6 restricted stock would be less than common.

7 Q Okay. And you also reference a loan, at
8 the very top of the page --

9 A Uh-huh.

10 Q -- on August 24th, 2005, \$2 million.

11 What were the terms of that loan?

12 A It was a short-term loan. I think it was
13 seven days. I think it says it right there.

14 Q What was the interest rate to be paid on
15 the loan?

16 A I don't think it had an interest rate.

17 Q And the loan was to be paid on seven
18 days?

19 A Uh-huh.

20 THE REPORTER: Your response?

21 BY MR. WILLIAMS:

22 Q You have to say "yes."

1 A Yes. Sorry.

2 Q And you -- and you believe the loan was
3 to be paid at seven days and had no interest?

4 A That's my recollection, yes.

5 Q Okay. And how do you -- how do you value
6 a debt instrument?

7 A You're asking a hypothetical?

8 Q I'm asking you in general. How do you
9 value a debt instrument?

10 MS. LAMBRACOPOULOS: Objection.

11 BY MR. WILLIAMS:

12 Q If you can say.

13 MS. LAMBRACOPOULOS: Objection. Form.

14 THE WITNESS: How do I val -- well,
15 one -- one way to do it is how I did it. You --
16 you have to look at the circumstances. That's how
17 valuations all are. You have to look at the facts
18 and circumstances.

19 BY MR. WILLIAMS:

20 Q Okay.

21 A So I need -- I need more for your
22 hypothetical to -- to answer the question.

1 Q When you say that's how I did it, what
2 did you -- well, what value did you determine
3 this -- this \$2 million loan to have?

4 A Well, I didn't value the loan, per se. I
5 valued the portfolio through my valuation test
6 through the coverage concept we discussed.

7 Q Through the coverage concept?

8 A Yes.

9 Q And is the coverage concept articulated
10 in any of the -- the literature that we talked
11 about earlier today?

12 A Not that we talked about thus far. It's
13 certainly in literature, though.

14 Q What literature?

15 A It's in the private equity guidelines
16 that Mr. Pump talks about.

17 Q Okay. What does it say about the
18 coverage concept?

19 A It basically says that the best way to
20 value a investment in a business is to look at the
21 total value of the company.

22 Q Okay.

1 MR. WILLIAMS: And with that, why don't
2 we go off the record briefly so the videographer
3 can change the tape.

4 THE WITNESS: Okay.

5 VIDEOGRAPHER: This concludes tape number
6 two in the video deposition of Marc Brown. The
7 time on the video is 12:26 p.m. We are off the
8 record.

9 (Recess)

10 VIDEOGRAPHER: This begins tape number
11 three in the video deposition of Marc Brown. The
12 time on the video is 12:37 p.m. We are on the
13 record.

14 BY MR. WILLIAMS:

15 Q Okay. Mr. Brown, I was asking you
16 earlier about the -- the bullet points at the top
17 of page 8 of your report.

18 Do you recall it?

19 A Yes.

20 Q Okay. And I was asking you about the \$2
21 million loan.

22 And the \$2 million loan was due to be

1 repaid you indicate in seven days --

2 A Yes.

3 Q -- on August 31st?

4 A Yes.

5 Q Do you know whether the loan was repaid?

6 A Not the time, no.

7 Q Do you know if the loan was ever repaid?

8 A It was restructured in the middle of

9 October, towards the end of October.

10 Q Was any -- ever any cash change hands?

11 A Not in the window that I looked at.

12 Q As far as you know ever? `

13 A Yeah, I mean I -- I looked at those three
14 months.

15 Q Okay. Do you believe that the -- the \$2
16 million loan as of August 31st, 2005, was worth \$2
17 million?

18 A I'm sorry, the loan was worth?

19 Q Yeah. Do you believe the \$2 million loan
20 was worth \$2 million?

21 A That's not the analysis I undertook.

22 Q Okay. So -- so you don't know whether or

1 not it was worth \$2 million?

2 A You know, back to my opinion. I tested
3 sort of the overall portfolio. I didn't look at it
4 on a security by security basis.

5 Q Okay. So you don't know one way or the
6 other whether or not the \$2 million loan was worth
7 \$2 million as of August 31st, 2005?

8 A Well, what I'll say again is that on a
9 total basis, the level of value attributed to the
10 side pocket, the side pocket that they set aside,
11 you know, because valuation was a challenge as the
12 managers indicated, that that total value is
13 reasonable given, you know, a reasonable valuation
14 of World Health at the time.

15 Q Yeah. I understand your -- your opinion
16 as to the total value. But right now I'm asking
17 you about the value of the \$2 million loan.

18 And am I correct in understanding that --
19 that you don't want to say one way or the other
20 whether or not the \$2 million loan was worth \$2
21 million as of August 31st?

22 A I didn't analyze the \$2 million loan.

1 Q You didn't analyze the \$2 million loan,
2 how --

3 A Not specifically.

4 Q Okay. Fair enough.

5 How about -- one of the previous pages is
6 a promissory note that appears for \$4 million.

7 Do you see that?

8 A Yes.

9 Q Did you analyze whether or not that \$4
10 million promissory note was worth \$4 million as of
11 August 31st, 2005?

12 A Again, I looked at the total portfolio
13 and whether -- whether it had coverage, which is
14 what the managers did at the time, which is what
15 restructuring people do, which is what I did at the
16 hedge fund. And that's how you value debt
17 securities in a distressed company.

18 Q Okay. And coverage -- coverage in terms
19 of assets of the company --

20 A Yes.

21 Q -- that would be available to satisfy the
22 debt?

1 A Yes.

2 Q Do you know whether or not World Health
3 ever declared bankruptcy?

4 A They did. It's in my report.

5 Q Okay. And do you know whether or not as
6 a result of that bankruptcy these debts were
7 covered?

8 A I don't think they were fully covered six
9 months, eight months later --

10 Q Do you --

11 A -- when the bankruptcy unwound.

12 Q Do you know whether they were covered at
13 all?

14 A Yeah, I -- I believe some payment was
15 received but I'm not sure. It was beyond the time
16 period I focused on.

17 Q Well --

18 A I mean I -- I was retained to look at,
19 you know, the reasonableness as of August 31,
20 September 30th, and October 31st, where you have a
21 hedge fund in the market at the time, as to whether
22 their marks and their -- and their side pocket that

1 they set up, you know, to sort of tell the
2 investors like, you know, there's some issues here,
3 we're concerned about it, and we're not sure what's
4 gonna happen, which is why they side pocketed these
5 assets. I was asked to see if that was reasonable.

6 So as of that time, as of the information
7 that I saw, both in the record and, you know,
8 independent research and analysis that I did, you
9 know, it appears reasonable.

10 Q Okay.

11 A You -- you could have expected -- they --
12 they expected, you can tell from their testimony
13 and from the letters to the -- to the investors
14 that they were doing coverage analysis, which is
15 the typical way you do this, and saying yeah, we're
16 covered here.

17 Q You ever spoken to Mr. Mannion?

18 A No.

19 Q You ever spoken to Mr. Reckless?

20 A No.

21 Q Okay. So -- so you're just offering your
22 opinion based on your reading of their testimony?

1 A Yeah, I mean that's -- they said it
2 repeatedly. They said --

3 Q Yeah.

4 A -- it in documents that I read, so --

5 Q They said it repeatedly?

6 A And it's in documents.

7 Q Well, I guess my question is if your
8 analysis indicates that all these assets were --
9 were covered, why weren't they covered when the
10 company finally went through bankruptcy?

11 A I don't know the full fact and
12 circumstances.

13 Q Isn't that something that you might want
14 to know in terms of testing the reliability of your
15 analysis?

16 MS. LAMBRACOPOULOS: Objection.
17 Foundation.

18 THE WITNESS: It's six, eight months
19 after the fact.

20 BY MR. WILLIAMS:

21 Q Do you know if anything materially
22 changed during those eight months?

1 A During those eight -- I don't.

2 Q Okay.

3 A I mean if -- if you put yourself back at
4 the time of the three NAV statements at the time of
5 what was going on, which is what in the valuation
6 practice you typically do -- I mean I did a
7 valuation for estate planning for a gentleman that
8 died a year ago. The report's probably gonna get
9 issued next week, you know. You have to look back
10 to that time period as to when the gentleman died.
11 It's March of 2011. You have to put yourself in
12 the shoes at that time, which is what I did.

13 So at that time, with the data that -- in
14 the marketplace and what I saw and the materials I
15 reviewed as part of this case, it appeared
16 reasonable.

17 Q But would you agree with me that the fact
18 that the assets were almost entirely not covered as
19 a result of the bankruptcy, that -- that would
20 appear to -- that -- that would indicate that the
21 valuations used in August 2005 were inaccurate?

22 A No.

1 Q But you don't know why -- why the assets
2 that -- that you believe were covered weren't
3 covered?

4 A Yeah, I mean that happened many months
5 after my analysis. Yeah, facts and circumstances
6 change.

7 Q Okay.

8 A Valuations get stale. I mean you --
9 that's why you do them.

10 Q But you -- you don't know what facts and
11 circumstances changed?

12 A It was beyond the time period I needed to
13 look at.

14 Q Because it was beyond the time period
15 that you looked at, you don't know why the
16 circumstances were different?

17 A No, I mean there's -- there's stuff in
18 the record that talks about -- I think that some of
19 the testimony makes it sound that, you know, they
20 expected more bidders to show up for the assets
21 than did. But beyond that, I don't know.

22 Q Do you know how much the assets of World

1 Health were ultimately worth?

2 A I think I know what they were sold for,
3 something like --

4 Q What were they sold for?

5 A \$53-ish million.

6 Q Okay. And you estimate the enterprise
7 value as of August 15th as -- excuse me, August
8 31st, 2005, as what?

9 A Between 77 and 86 million, I think, 85.7.
10 Based on what was known and knowable at the time,
11 as of August of --

12 Q You --

13 A -- 2005.

14 Q -- you estimated it at 86 million as of
15 August 31st, on Exhibit 5-5?

16 A 5-5, no. Well, that's -- that's what the
17 market was saying it was worth.

18 Q Okay. Based on your analysis, that's
19 what the market was saying it was worth?

20 A Well, that is what the market was saying
21 it was worth.

22 Q Okay.

1 A It was a publically traded stock price.

2 Q Well, the publically traded stock price
3 was 22 cents, correct?

4 A Yes.

5 Q And it had a market capitalization of 17
6 million, correct?

7 A Yes. You asked me about that specific
8 exhibit. And that's what that exhibit is.

9 Q Yeah, and -- and the enterprise value
10 that you indicate is \$86 million, correct?

11 A Well, that's what the market derived for
12 enterprise value is, yes.

13 Q Okay. And that enterprise value is less
14 than the ultimate price that the company received
15 in the sale of its assets, correct?

16 A Yes. Ultimately when it was sold several
17 months later, it was sold for less. But that
18 wasn't known or knowable at the time.

19 Q Okay. And is it pos -- is it possible
20 that the enterprise value that you calculated
21 reflects an -- an overestimation of the -- of the
22 actual value of the company?

1 A Could be an underestimation.

2 Q Well, it could be an overestimation?

3 A Could be, either. But based on my
4 analysis, which is extremely conservative, I mean
5 it was a reason -- it was reasonable for the value
6 ascribed to the side pocketed portfolio assets they
7 ascribed.

8 Q Okay.

9 A I mean I -- we haven't really talked
10 about it. We talked about my 33 percent -- percent
11 discount to the value from the guideline companies.
12 But I've also cut revenue 25 percent from where
13 they expected to be. I've also cut their EBITDA
14 margin by 33 percent. So effectively, the all-in
15 discount, 65 percent.

16 Q I thought -- I thought you testified that
17 you didn't know what the companies revenues were in
18 2005?

19 A Well, they were expecting, even after the
20 accounting allegations came out, to do 190 million
21 of revenue. I used 142. That's about a 25 percent
22 discount.

1 Q Who -- who was expecting?

2 A The new management of the company after
3 McDonald had left.

4 Q And what was the result of the internal
5 investigation with respect to the accounting
6 irregularities?

7 A The one that came out four or five years
8 later?

9 Q Yeah, what was known and know -- knowable
10 about that in August of 2005?

11 A What was known and knowable was that
12 there were some potential problems. There's a
13 letter from the auditors who are dismissed that
14 talks about some of those issues, which is another
15 reason why I used a smaller revenue number and
16 didn't use their reported EBITDA numbers.

17 Q Okay. And would you agree with me that
18 the fact that the \$2 million loan that was due on
19 August 31st, 2005, wasn't repaid, that was a fact
20 that was known and knowable on August 31st, of
21 2005?

22 A Yeah, of course. I mean that was part of

1 the discussions for the restructuring.

2 Q Would you agree with me that when you
3 loan someone \$2 million and expect it to be repaid
4 and they don't repay it when they say they're going
5 to repay it, that that's a bad sign?

6 A I would say it's a technical default.

7 Q You wouldn't say that's a bad sign?

8 Let me put it that way. If you loaned
9 somebody \$2 million and they didn't pay you back
10 when -- when you asked them to, would that be more
11 than a technical default, in your opinion?

12 A So you're asking --

13 MS. LAMBRACOPOULOS: Objection.

14 You can answer.

15 THE WITNESS: You're asking me a
16 hypothetical?

17 BY MR. WILLIAMS:

18 Q Yeah.

19 A If I loaned an individual \$2 million?

20 Q Sure.

21 A Yeah, an individual is different than
22 a -- than a business.

1 Q Okay. You loan a business \$2 million --

2 A Uh-huh.

3 Q -- seven days, interest rate -- first of
4 all, would you loan -- would loan someone seven
5 day -- a seven-day -- well, make a -- make a
6 seven-day loan for \$2 million with no interest?

7 A I am not a banker.

8 Q Sure. And if -- if you made the loan and
9 they didn't repay, would that be a bad sign?

10 MS. LAMBRACOPOULOS: Objection. Form.

11 THE WITNESS: I think you need to look at
12 the total picture here. They loaned them some
13 money because you have a company that is in a
14 short-term liquidity crunch because their
15 traditional lender has frozen lending for what I
16 understand was, you know, it's gonna take us two
17 weeks to figure this out.

18 It's a rescue loan, which hedge funds do.
19 And, you know, if you're loaning it to -- in a
20 different circumstance, maybe. But in this case
21 it -- you need to look at the facts and
22 circumstances.

1 It actually -- frankly, that's one reason
2 why I did the coverage test, because this is a
3 restructuring. This is -- that is how you do it.
4 You look at -- you look at: Am I covered? If I'm
5 gonna loan this money, can I get it back? If
6 everything goes south, am I gonna get this back?

7 BY MR. WILLIAMS:

8 Q So in the circumstance -- facts and
9 circumstance that you've describe, where the -- the
10 ordinary lender has cut off funding, the hedge fund
11 makes an emergency loan to the business of \$2
12 million because they need to -- to continue their
13 operations, and they don't pay you back, wouldn't
14 that indicate to you that the \$2 million is
15 probably worth less than \$2 million?

16 A Not necessarily. I -- I mean you'd look
17 at the coverage, like I said. They expect -- they
18 fully expected to get paid on this.

19 Q Okay.

20 A They thought the company was worth -- you
21 know, they threw a lot of numbers around, but --
22 120 to 190, a hundred, whatever.

1 Q They threw a lot of numbers around but
2 the -- the money never actually came back to the
3 Defendants, did it?

4 A I don't think in full. But that's sort
5 of outside what I -- you know, the time period I
6 focused on.

7 Q Okay. So in evaluating how much a loan
8 was worth, you didn't focus on how much of the loan
9 was actually repaid?

10 A No, I -- I looked at, at the time, what
11 was known and knowable 8/31/05, 9/30/05, 10/31/05.
12 Whether it wasn't paid or was paid in January,
13 February, or March of 2006, I don't know.

14 Q Okay.

15 A I will say that it was exchanged for
16 another security in an arm's length, willing buyer,
17 willing seller transaction in October of 2005.

18 Q In an arms length, willing buyer, willing
19 seller. So -- and -- and that's -- and that's how
20 you value something, right, whether or not -- how
21 much it would be -- be sold for in an arm's length,
22 willing buyer, willing seller transaction, right?

1 A It can be. Depends on the facts and
2 circumstances.

3 Q Okay. So if -- how much a -- how much an
4 asset would sell for in an arm's length, willing
5 buyer, willing seller transaction, that's --
6 that's -- there's circumstances where that wouldn't
7 be the value of the asset?

8 A I'm sorry, can you repeat the question?

9 Q Yeah. So if you have an arm's length,
10 willing buyer, willing seller exchanging
11 consideration for a particular asset, is there a
12 circumstance where that amount of consideration
13 wouldn't be the value of the asset?

14 A I mean it -- it depends on if it's truly
15 a willing buyer, a willing seller, if there was a
16 distress element or a forced sale.

17 Q Is --

18 A Or what -- what the expectations were.
19 In that case, you know the -- you know the
20 transaction occurred. It's not a hypothetical,
21 right?

22 Q Right.

1 A So two parties did a transaction. It's
2 an indic -- it's indication of value. Could've
3 been worth more. Could've been worth less. But
4 it's an indication of value.

5 Q And was -- was the exchange situation
6 that you're referring to, was that -- did that
7 involve a distressed party?

8 A Yeah, it involved World Health.

9 Q You agree World Health was distressed?

10 A At some level, sure.

11 Q Okay. And so if you're holding \$2
12 million worth of debt from a distressed party --

13 A And I'll say -- let --

14 Q -- whose primary -- whose primary lender
15 has cut off funding, you believe that in a willing
16 buyer, willing seller transaction, as of August
17 31st, 2005, that \$2 million note would be -- would
18 be sold for \$2 million?

19 A You asked a lot of questions in there.
20 Can you -- can you break that down --

21 Q Sure.

22 A -- a little bit?

1 Q And given the -- the distressed nature of
2 World -- World Health, given that World Health
3 had -- it's, you know, primary lender had cut off
4 funding, as you say it was a distressed party,
5 there's a \$2 million note issued by Palisades to
6 World Health, short-term note with no interest,
7 note hadn't been repaid, do you believe that under
8 those circumstances in a willing buyer, willing
9 seller transaction, that \$2 million note would be
10 worth \$2 million?

11 MS. LAMBRACOPOULOS: I've got a number of
12 objections but there are too many of the details so
13 let me just say objection.

14 You can answer.

15 THE WITNESS: So you're asking me a
16 hypothetical?

17 BY MR. WILLIAMS:

18 Q Yes.

19 A And you're asking me to assume that the
20 seller of that loan is a willing seller. 'Cause
21 that's -- that's not the case -- it's a different
22 situation than what we were talking about in

1 October. So I just want to make that clear.

2 Q Okay.

3 A So we're on a hypothetical?

4 Q Right.

5 A And you're assuming that the seller wants
6 to sell?

7 Q Right.

8 A And you're asking what?

9 Q Would the \$2 million note be worth \$2
10 million?

11 A It's unclear. I didn't -- I didn't
12 undertake that analysis.

13 Q Would you buy the \$2 million note for \$2
14 million?

15 MS. LAMBRACOPOULOS: Objection.

16 THE WITNESS: I'm not in the business of
17 buying notes, but I'd have to look at the facts and
18 circumstances.

19 BY MR. WILLIAMS:

20 Q I understand.

21 Let me hand you another document.

22 MR. WILLIAMS: And I'm going to ask the

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1 court reporter to label it as Exhibit Number Brown

2 3.

3 (Brown Exhibit No. 3 marked

4 for identification.)

5 BY MR. WILLIAMS:

6 Q And Mr. Brown, I'm going to represent to

7 you this document is a multiple page document

8 entitled, Rebuttal Expert Report of Bernard Pump,

9 and it's May 4th, 2012.

10 My question to you is have you -- have

11 you seen this report before today?

12 A I have.

13 Q Have you reviewed it?

14 A I have.

15 Q Do you know Mr. Pump?

16 A I don't. Same town I know, but don't

17 know him.

18 Q You ever heard of him?

19 A No.

20 Q Let me ask you to turn to page 6 of

21 the -- of the first part of the report that --

22 that's label 6 of 16.

1 A Okay.

2 Q And Mr. Pump states, under Basis For
3 Opinions, The methodology used by Mr. Brown to test
4 the reasonableness of the valuations performed by
5 the Defendants World Health Securities is
6 misleading, fails to test whether the values
7 assigned by the Defendants were reasonable, fails
8 to test whether the valuations were either
9 consistent with the valuations policies of the
10 relevant funds or consistent with fair value, and
11 ignores facts known in this matter.

12 My question to you is did you test the --
13 the reasonableness of the valuations performed by
14 the Defendants?

15 A Absolutely.

16 Q Okay. Did you test them individually?

17 A No. I tested the -- the total side
18 pocket, which is what was at issue.

19 Q I see. And you indicated that because
20 the side pocket assets were covered by equity in --
21 in World Health, that they were reasonable.

22 Is -- is that a fair sum --

1 A I didn't --

2 Q -- summation?

3 A I didn't say equity in World Health. I
4 said value. But sure.

5 Q Okay. And if the fund managers had
6 valued those assets at instead of approximately \$15
7 million as of August 31st, if they'd valued them at
8 \$20 million, would that have been reasonable if --
9 given that the assets would've been covered?

10 A Potentially.

11 Q How about if you'd valued them at 50
12 million?

13 A Probably not.

14 Q Probably not.
15 30 million?

16 A I'm not sure. I didn't -- I didn't
17 undertake that analysis.

18 Q Sure. Did you -- did you evaluate
19 whether or not the values of the -- the side pocket
20 of World Health assets were consistent with the
21 fund's valuation policies?

22 A I wasn't asked to, but I certainly

1 reviewed those policies as part of reading his
2 report and actually going through it before I
3 issued my own report.

4 Q Okay. Having -- having reviewed them,
5 did you test whether or not the -- the managers'
6 valuations were consistent with those policies?

7 A Did I test it? No, I tested the
8 reasonableness. But I -- I did note that they had
9 discretion to assign a value to it, which is what I
10 was testing.

11 Q And you were testing the reasonableness
12 of the value that they assigned?

13 A Correct.

14 Q Did you test whether or not the value
15 they assigned was consistent with fair value?

16 A How do you define fair value?

17 Q Well, let me ask you how do you define
18 fair value?

19 A In this context.

20 Q In any context.

21 A Well, that's why I asked the question,
22 because it's --

1 Q Okay.

2 A -- it's a different definition in fifty
3 different states and different countries and --

4 Q Okay.

5 A -- different time periods.

6 Q Well, in this time period then. Fair
7 enough.

8 A Sure. In this context, you know, the
9 documents that governed here, the -- you know, the
10 PPM and the confidential offering memorandum, talk
11 about both fair market value and fair value. You
12 know, you look at some of the accounting regs that
13 Mr. Pump cited, and they all generally say the same
14 thing: Willing buyer, willing seller sort of
15 concept.

16 Q Uh-huh.

17 A So that's what I tested. I tested a -- a
18 situation. And it's -- a lot of them also say, you
19 know, and not a distressed sale or not a forced
20 sale. I conservatively looked at it from a forced
21 situation because it -- given the facts and
22 circumstances of World Health, where it was at that

1 point, I'm gonna say it's distressed, okay.

2 The operations actually appeared fairly
3 sound, from everything that, you know, I've read
4 and seen. But obviously they had some
5 irregularities. They had some issues. So I tested
6 the reasonableness of that, assuming that the
7 management of World Health at the time was a
8 willing seller, even though it's a distressed sale,
9 even though they realized they're not gonna get
10 full value for their -- their enterprise if they
11 had to sell it that day.

12 Q I guess you lost me a little bit.

13 My question was did you test whether or
14 not the fund manager's valuations were consistent
15 with fair value?

16 A That's what I'm saying. I -- I tested
17 the reasonableness. And -- and by going through my
18 test of the reasonableness of their valuations, I
19 employed a methodology which is a conservative view
20 of fair value.

21 Q Okay. And as -- as you mentioned, Mr. --
22 Mr. Pump cited various accounting literature and so

1 forth.

2 Is there any accounting literature
3 that -- that articulates a view of fair value
4 consistent with the analysis that you performed?

5 A Well, like I said, I think you gotta look
6 at the facts and circumstances. And obviously said
7 this is a distressed situation so I did a lower
8 value than what the regulations probably indicate
9 that you would look at.

10 Q But -- but with respect to accounting
11 literature that -- that sort of embraces your --
12 your form of analyses?

13 A There's not really accounting literature
14 for distressed companies.

15 Q Okay.

16 A I mean what I did is what is done in the
17 marketplace on a day-by-day basis with
18 restructuring companies, with distressed hedge
19 funds. I looked at it. And when I -- I when I saw
20 what they had done and when I saw their testimony
21 about coverage, you know, I'm like that makes
22 sense. That's how I would approach it. That's how

1 I did approach it. That's how people in the
2 industry approach it.

3 Q So as long as the asset was covered, then
4 they have every reason that it's gonna be paid.

5 Do you agree with that, or no?

6 A You have every reason to believe that you
7 will receive that value in some form.

8 Q Let me ask you to turn to page 12 of his
9 report.

10 A Okay.

11 Q And Mr. Pump is talking about the two
12 guideline companies that you select. And he -- he
13 asserts that they were not comparable to World
14 Health as of August 31st through October 31st of
15 2005, and produce an estimate of enterprise value
16 of World Health is likely overstated.

17 First of all do you -- do you disagree
18 with that?

19 A Absolutely.

20 Q Okay. And he goes on to assert that
21 they -- they provide similar services to those
22 provided by World Health but they're substantially

1 different in a number of ways. And he refers, in
2 the next sentence, that they are financially
3 healthy companies. And by August 31st, 2005, there
4 was significant uncertainty about the future of
5 World Health and its ability to operate as a
6 going -- as a going concern.

7 Do you agree with that?

8 A It'd say there is certainly uncertainty
9 about the future of World Health. I don't know if
10 it's significant. And I'm not sure about the going
11 concern part. I mean --

12 Q You --

13 A -- it certainly operated as a going
14 concern until it was sold.

15 Q I thought you indicated that you would
16 agree that World Health was distressed?

17 A Yeah, that's -- that's different.

18 Q Okay. Well, how's it different?

19 A Because you can be distressed and come
20 out of your distress. It doesn't -- I mean when
21 you're -- when you stop being a going concern,
22 it's -- you're -- you're liquidating.

1 Q Okay.

2 A Which is not fair value.

3 Q Okay. And you don't believe that there
4 was any reason to believe that -- that World Health
5 had any concerns about whether or not it would --
6 could continue as a going concern as of August
7 31st, 2005?

8 A Well, it says significant uncertainty. I
9 would say there was uncertainty. There was
10 uncertainty for any business.

11 Q And on -- on the next page there are
12 seven factual bullet points that Mr. Pump cites.

13 And do you -- do you disagree with any of
14 these factual assertions?

15 A Other than the fact that three and four
16 are the same point. And I don't know about number
17 two. I don't think that there's enough evidence to
18 support that.

19 Q Number two says, World Health needed but
20 was unable to raise additional financing?

21 A Correct.

22 Q You don't believe there's enough evidence

1 of that?

2 A Yeah, I mean there was indications that
3 they needed financing and it was provided by
4 Palisade. And there was indications they were
5 looking to raise financing or sell the business.

6 Q And --

7 A They ultimately sold the business without
8 raising new funds. I -- I mean they got lending
9 back from Cap Source, which increased their
10 borrowing throughout the period I looked at. So
11 they -- they had financing.

12 Q Okay. And so World Health was -- was --
13 attained financing from -- for Palisades, right?

14 A From Palisades and from Cap Source.

15 Q Okay. And the funding -- the financing
16 that -- that World Health had obtained from
17 Palisades was -- was due to be repaid in a fairly
18 short term, correct?

19 A Yeah, as I understood it -- and it's a
20 little unclear -- but as I understood it, it was
21 basically to bridge between Cap Source, you know,
22 stopping lending and restarting.

1 Q And during the period that you look at,
2 August 31st through October 31st, 2005, was that
3 short-term financing ever repaid?

4 A Was it ever repaid. It was exchanged for
5 a new interest bearing security in October 24th of
6 '05.

7 Q Was it ever repaid in cash?

8 MS. LAMBRACOPOULOS: Objection. Form.

9 THE WITNESS: Again, it was exchanged for
10 security. So by it's nature, if it was exchanged,
11 it wasn't repaid in cash.

12 BY MR. WILLIAMS:

13 Q Okay. And he goes on to state that --
14 that the market capitalization of equity for AMN
15 and Cross Country were approximately 488 and 636
16 million as of August 31st, 2005, respectively,
17 while according to Mr. Brown World Health's market
18 capitalization of equity was approximately 17
19 million.

20 And he -- at the -- at the final sentence
21 of the paragraph says the -- The differences in
22 size alone reduced the reliability of the two

1 companies used by Mr. Brown to estimate the
2 enterprise value.

3 Do you agree with that?

4 A No.

5 Q Okay.

6 A I mean size is certainly a factor, but I
7 accounted for it.

8 Q Okay.

9 A As is growth, as are other things.

10 Q Okay. Let me ask you to take look at
11 page 14, at the last paragraph there, where it's
12 talking about your -- your calculation of
13 enterprise value.

14 A Uh-huh.

15 Q And in the second sentence of the final
16 paragraph there it says, It is not uncommon for
17 publicly traded companies to have common stock with
18 a positive market capitalization, but have
19 preferred stock or debt with a value below the
20 principal or par value or below the price that
21 investors paid for these securities.

22 Do you agree with that?

1 A Sure. PepsiCo bonds trade for less than
2 par.

3 Q Okay.

4 A So did General Mills.

5 Q And so would you agree with me that --
6 that a bond that trades for less par is worth less
7 than par?

8 A Not necessarily.

9 Q Okay. So if a bond sells for \$10, you
10 believe that the bond wouldn't be worth \$10 on the
11 day it's sold?

12 A You gotta look at the facts and
13 circumstances of that transaction.

14 Q Okay.

15 A If it was a distressed sale, right? I
16 mean during the financial crisis hedge funds were
17 selling stuff like crazy 'cause they were -- they
18 had to.

19 Q Okay. But --

20 A Those were distressed sales.

21 Q You mentioned Pepsi bonds, right?

22 A Uh-huh.

1 Q Is that a "yes"?

2 A Yes.

3 Q Okay. And -- and a bond that trades
4 for -- you -- would you agree with me that the
5 publically traded value of a -- of a bond-type
6 security is -- is the value of the bond?

7 A Again, it depends on the security. I
8 don't know how liquid Pepsi is. I would assume --

9 Q It's probably --

10 A -- more --

11 Q -- pretty liquid?

12 A -- probably fairly liquid. So it's a
13 good indication. But if it's an illiquid security,
14 not necessarily.

15 Q Okay. Did you account for the fact that
16 the market value of certain debt securities might
17 be lower than the -- than the indicated enterprise
18 value?

19 A I'm sorry, I don't understand the
20 question.

21 Q Right. Well, did -- did you account for
22 the fact that the market value in terms of what a

1 willing buyer would pay a willing seller for a
2 particular debt security might be less than the
3 amount indicated by the face value of the security?

4 A Are you asking me a hypothetical or --
5 I'm not sure of --

6 Q No, I'm --

7 A -- your question.

8 Q -- I'm asking in the context of your
9 analysis, as I understand it, that the debt that --
10 that Palisades had in -- in World Health was -- you
11 indicated that the valuations were reasonable
12 because they were, as I understand it, covered by
13 potential equity or assets of the company?

14 A Correct.

15 Q Did you account for the fact that
16 notwithstanding the fact that the assets were --
17 that the -- that the debt was covered, that it
18 may -- that the market value of the -- of the debt
19 might be less than indicated on face?

20 A Well, they didn't have publically traded
21 bonds, if you're asking about World Health. Are
22 you asking about World Health?

1 Q Yeah.

2 A They didn't have publicly traded bonds.
3 The last two bond transactions that I'm aware of
4 both went off at a premium.

5 Q Right. But what I'm asking you is did
6 you account for the fact that -- or maybe you
7 didn't.

8 Did you -- did you endeavor to -- to
9 calculate what the value of World Health's debt
10 owned by Palisades was?

11 A Again, I -- I tested the reasonableness
12 of their total portfolio of World Health
13 securities.

14 Q And is testing the reasonableness of the
15 total portfolio of World Health securities
16 different than calculating the value of World
17 Health securities in Palisades' portfolio?

18 A No. I mean it's -- it's -- that's how
19 you would ascertain if the value is reasonable: Is
20 it covered? Will I -- will I get value back for
21 this?

22 Q I understand that's how you tested it,

1 whether or not a value is -- is reasonable.

2 My question is, is it -- is it different
3 than calculating the value?

4 A I -- I don't understand your question
5 'cause -- I'm sorry if I'm not answering it
6 correctly. I -- I don't understand it.

7 Q Okay.

8 A That's what I did. I -- I tested the
9 value. I looked at a range of enterprise values
10 based on a guideline approach. And I also looked
11 at what the market indicated it was worth.

12 Q And let's -- let's go back to your --
13 your report for a minute.

14 And can you show me where in your report
15 you indicate that the value of the -- the -- the
16 bundle of World Health assets held by Palisades was
17 reasonable?

18 A Where I indicate it?

19 Q Yeah.

20 A It's my opinion on page 3.

21 Q No, I mean is there -- is there a
22 calculation that shows it?

1 A Yeah, there is. There is a calculation
2 on page 20, table 10.

3 And I should note that if you wanna look
4 at this table and you wanna look at the convertible
5 debentures line of 22 million at both August and
6 September and then about 12 million in October,
7 that number is -- I've subsequently come to find
8 out that it's too high, that they exchanged some of
9 the debt in July and August, such that the numbers
10 at the bottom of 7.58 in August and 3.8 in
11 September and 5.2 in October actually go up by
12 about 7.52 million.

13 Q Okay. And so you talked about --

14 A Which would increase the coverage.

15 Q Okay. So what -- where -- where is the
16 coverage? Is this --

17 A It's that last line, excess debt and
18 preferred stock coverage.

19 Q Okay. So --

20 A So you take that number and add
21 7-and-a-half million to it.

22 Q Okay. So you have an enterprise value

1 you're talking about as of August 31st?

2 A Correct.

3 Q Okay. So --

4 A As of each of the dates.

5 Q Okay. So as of August 31st, you have
6 78.8 million as an estimated enterprise value, and
7 from that you're subtracting the company's debt?

8 A Correct.

9 Q Okay. And you say excess debt coverage
10 before a preferred stock?

11 A Yeah, that's only -- it doesn't matter
12 for August or September. But then in October
13 they've got the preferred through the standstill
14 securities exchange.

15 Q Uh-huh. And so your conclusion is the
16 company had -- and you indicated it's higher than
17 this -- but your conclusion is the company had
18 approximately \$7.5 million in assets more than it
19 owes?

20 A As of what period?

21 Q As of August 31st, two thou --

22 A No, it's 15. Adjusted for, in my new

1 understanding of the debt levels of the --

2 Q But they chart it's 7.5.

3 But based on your new understanding it's

4 15 --

5 A Correct.

6 Q -- is that what you're saying?

7 THE REPORTER: Remember, y'all. I didn't
8 get all the question and -- nor the answer.

9 BY MR. WILLIAMS:

10 Q Based on the chart, it's approximately
11 7.5 million; based on your new understanding it's
12 approximately 15 million; is that --

13 A That's correct.

14 Q Okay.

15 A For August 31st.

16 Q Okay. And for August 31st, 2005, you
17 indicate the \$2 million loan, \$4 million promissory
18 note, 22 million in convertible debentures.

19 Is there any indication with respect to
20 the -- the companies unrestricted or restricted
21 stock in this chart?

22 A No. This is showing the coverage of the

1 debt securities.

2 Q I see.

3 A But the fact that there is coverage,
4 right. So in August there's \$15 million. That's
5 the same as saying there's equity. There's 15
6 million available to equity.

7 Q So in August if -- is it fair to say that
8 what you're at -- your analysis here indicates is
9 that the debt that Palisades holds in World Health,
10 World Health has the abil -- has the ability to
11 repay?

12 A No. What I'm saying is that it is
13 covered in the sense if -- if you had to go through
14 a restructuring, which it appears what was gonna
15 occur, would be able to receive that value.

16 Q And so you -- you believed, based on your
17 analysis, that Palisades would be able to receive
18 the value that's reflected in its debt?

19 A Yes. They -- they had full coverage,
20 according to my analysis.

21 Q Okay. Well, the value of the -- the
22 company's unrestricted and restricted stock is --

1 is not included in this chart, is it?

2 A Not directly, but it's -- it shows the
3 coverage at 7-and-a-half in the chart and 15
4 million in total. So that would imply that the
5 stock is covered. And I mean it dovetails with
6 what the market cap was at the time.

7 Q Stock is covered in terms of what?

8 A If you -- there's -- there's equity
9 value.

10 Q The stock --

11 A If you -- if you wanna cha -- turn to
12 page -- well, Exhibit 5-5. You wanna look at the
13 top. And you can look at the publically traded
14 equity, the market capitalization line.

15 Q Yeah.

16 A So that's 17.38 million at August 31st.

17 Q Yeah.

18 A That's the same sort of concept as the --
19 the 15 million that we're talking about from a
20 revised version of table 10.

21 Q Uh-huh.

22 A It's the same idea.

1 Q Okay. So the idea with respect to the
2 debt is the debt will ultimately be repaid
3 because --

4 A Yeah, you'll receive that value, yes.

5 Q With respect to the stock, the stock
6 sells for what the stock sells for; is that fair?

7 A The stock sells for --

8 Q For example, on table -- Exhibit 5-5, you
9 indicate the price of the stock at 22 cents?

10 A Correct.

11 MS. LAMBRACOPOULOS: I'm sorry, is your
12 question related to the restricted stock or the
13 common stock?

14 MR. WILLIAMS: That's -- that's a good
15 clarification.

16 BY MR. WILLIAMS:

17 Q So with respect to the company's common
18 stock, if the -- if Palisades wanted to sell the
19 Pal -- the company's unrestricted common stock,
20 they could expect 22 cents a share; is that fair?

21 A That's what it was trading for in the
22 marketplace, yeah.

1 I think maybe what you're failing to
2 understand is the subtlety behind table 10, though,
3 that if you look back to table 9, it probably
4 describes it a little bit better.

5 And the idea is, you know, I looked at
6 the total value of the portfolio. And because of
7 the nature of the face value of the securities
8 versus what they were on the NAV at, for example,
9 the convertible debenture, so when you -- when you
10 turn that into the company and said pay me back,
11 give me value, it's 9.67. But on the NAV, it's at
12 7.35. It's at a 24 percent discount.

13 So, you know, there's a difference there
14 that that sort of provides additional coverage, if
15 you will.

16 Q I see. So -- so you're saying that what
17 you'd really get back from the convertible
18 debenture, it is actually more than what they
19 valued it at, so that offsets the fact that they
20 inflated the value of the restricted stock?

21 MS. LAMBRACOPOULOS: Objection.
22 Foundation.

1 THE WITNESS: I don't think that's my
2 testimony at all. If you look on a total portfolio
3 basis, they were covered.

4 BY MR. WILLIAMS:

5 Q On a total -- total portfolio basis, big
6 picture?

7 A I don't know what that means.

8 Q Okay. And in table 9 there is a
9 reference to World Health common entity NAV.

10 And -- and that's the -- the value of the
11 unrestricted and restricted stock?

12 A Yes.

13 Q Okay. And you add this all up to the
14 aggregate what the -- what the company -- what the
15 managers valued the -- the side pocket assets of as
16 of 8/31/2005?

17 A Yeah, that aggre -- aggregate NAV matches
18 that number. So 15.357 is what's on the -- the NAV
19 statement at August 31, '05.

20 Q Okay. And you go ahead and calculate the
21 face value of the debt.

22 And my question to you is did the

1 managers value the debt at face value?

2 A Well, they -- they put it on their books
3 originally at cost, which is what they paid for,
4 which is the 7.35. They didn't -- they didn't
5 increase the value. They didn't raise the value.

6 Q Okay. But you raised it here in your
7 table 9?

8 A I didn't raise the value. I'm showing
9 the coverage. I'm showing you that when you hand
10 in the convertible security, you don't get 7.35
11 back, you get 9.67.

12 Q Well, they didn't get back 7.35, did
13 they?

14 A I don't know what they got back.

15 Q Okay.

16 A But at the time, at 8/31/05, there was
17 adequate coverage of that value in order that you
18 could expect to receive that value.

19 Q Based on your calculation?

20 A And what the market was saying as well.

21 Q Based on your evaluation of what the
22 market was saying?

1 A Based on my "valuation" of the market?

2 Q Yeah.

3 A I don't think that's -- I didn't value
4 the market.

5 MS. LAMBRACOPOULOS: Is your question "a
6 valuation" or "evaluation" of the market?

7 BY MR. WILLIAMS:

8 Q "Evaluation."

9 A Yeah, I mean that's what the market said.
10 That's where the stock price indicated.

11 Q And the stock price was approximately 90
12 percent lower than it was prior to the -- the
13 accounting irregularities?

14 A Yeah, approximately.

15 Q Okay. So based on the 90 percent decline
16 in stock price, the market believed that -- that
17 all of these debt securities were -- would be paid
18 ultimately at full -- at face -- full face value?

19 A You have a company that was worth 216
20 million the day before. The market's saying it's
21 worth 86, 87 the next day. Or not the next day,
22 but two weeks later. Yeah, they're showing that

1 there's coverage of these securities, absolutely.

2 Q 86, 87, that's ind -- an indication
3 that -- well, you would agree with me that the --
4 the market capitalization was -- was not 86 or 87
5 million, it was approximately 17 million?

6 A Approximately. That's the equity
7 component of it.

8 Q Right.

9 A Right.

10 Q And you indicated -- and correct me if
11 I'm misremembering what you said -- you indicated
12 that you did an analysis of the -- of the total
13 portfolio, total side pocketed assets of World
14 Health that -- that -- held by Palisades as of
15 three dates?

16 A Yes. I looked at if the value in the
17 side pocket that they set aside, if it was
18 reasonable.

19 Q Okay.

20 A In total.

21 Q If you were advising someone who wanted
22 to buy those assets, how would you have evaluated

1 the value of those assets?

2 A Same way.

3 Q Same way?

4 A Sure.

5 Q And so you would have advised someone --
6 and so did -- did you -- did you determine what --
7 what a fair price for those assets was?

8 A That's what I tested the reasonableness
9 of.

10 Q Okay. And so based on your test, you
11 believe that the -- the 15.357422 as of August
12 31st, 2005, would have been a fair price for those
13 securities?

14 A Yes. They were covered. Absolutely they
15 were covered.

16 Q And you believe that would have been a
17 fair price to pay, if you were advising someone who
18 wanted to buy --

19 A On a portfolio basis, yeah.

20 Q Yeah.

21 A Yes. Doesn't mean -- I mean that's what
22 they're worth, sure.

1 Q So if you were advising someone on a
2 portfolio basis, so you -- strike the question.

3 If you were advising someone who wanted
4 to buy these assets on a portfolio basis, you would
5 have advised them that the valuation created by the
6 managers' share was reasonable?

7 A That's what my opinion was.

8 Q And but -- but that's not my question.

9 If you were advising someone who wanted
10 to buy the assets, you would advise them that
11 the -- that the price being set by the fund
12 managers was a reasonable one?

13 A Yes.

14 Q Okay. Would you have advised a willing
15 buyer to purchase the restricted stock for
16 \$1.9 million?

17 A You're asking me hypothetically?

18 Q Yeah.

19 A I didn't -- I didn't look at the
20 individual value of the restricted stock.

21 Q You don't want to comment on that?

22 MS. LAMBRACOPOULOS: Objection.

1 THE WITNESS: I -- is that a question?

2 BY MR. WILLIAMS:

3 Q Yeah.

4 A I don't want to comment on it? That's
5 the question?

6 Q Yeah.

7 A I did not undertake that analysis.

8 Q Fair enough.

9 As you sit here and think about it today
10 with respect to the -- the \$1.9 million valuation,
11 approximately, on the restricted stock as of August
12 31st, 2005, do you believe that valuation was
13 reasonable?

14 A You're asking me on that specific
15 security?

16 Q Yes, sir.

17 A You know, back to my original testimony,
18 my opinion is laid out in my report. I didn't -- I
19 didn't look at it on an individual basis. I didn't
20 need to. That's not what at -- what's at issue
21 here.

22 Q Well --

1 A My understanding of the allegations are
2 the portfolio was inflated. The management fees,
3 which are calculated on the portfolio were
4 inflated. And what -- what my analysis shows is
5 that on a portfolio basis it wasn't unreasonable.

6 Q Okay. Well, thank you for your -- your
7 understanding of the allegations, but my question
8 is with respect to the restricted stock in
9 particular, is -- is it your opinion that the
10 \$1.9 million valuation as of -- approximately
11 \$1.9 million valuation as of August 31st, 2005, was
12 reasonable?

13 A I didn't -- I didn't form an opinion one
14 way or the other.

15 Q Okay. If you were advising a buyer who
16 wanted to buy a restricted stock in World Health
17 when the stock was currently trading at 22 cents a
18 share, would you have advised them that restricted
19 stock priced at approximately \$1.99 a share was
20 reasonable hair?

21 MS. LAMBRACOPOULOS: Objection. Outside
22 the scope of his opinion.

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1 THE WITNESS: Yeah, I mean I certainly am
2 in the advising someone on buying it. You have to
3 look at the facts and circumstances. Maybe. I
4 don't know. I didn't look at that analysis.

5 BY MR. WILLIAMS:

6 Q Maybe?

7 A If -- if the -- if -- if there's
8 significant value here, as the indications show,
9 that stock could potentially be in the money. I
10 don't know. I didn't look at it.

11 Q Let me ask you to take a look back at the
12 Pump report, if you -- if you would; the Pump
13 rebuttal report.

14 A Okay.

15 Q And I'm directing you to page 8 of that
16 document.

17 A Okay.

18 Q And under subheading 3, talking about the
19 methodology used by Mr. Brown to test the
20 reasonableness of the valuation performed by the
21 Defendants of the PMF convertible debenture and
22 bridge loan securities fails to test whether the

1 values assigned by the Defendants were reasonable,
2 and ignores facts known to this matter.

3 Have you read this part of Mr. Pump's
4 report?

5 A I have.

6 Q Okay. And he says in the second
7 sentence, As discussed in the Pump report, a
8 willing buyer of the convertible debenture and
9 bridge loans owned by PMF would have considered the
10 significant risk that World Health would be able
11 to -- would be unable to service and repay its
12 debt, which typically lowers the value of a
13 business and its debt securities.

14 Do you agree or disagree with that?

15 A If you wanna look at it solely from a
16 buyer's perspective, they always want to pay less
17 money, sure.

18 Q Do you agree with that?

19 A The fact that he doesn't use the word
20 "seller," yeah, a buyer's always gonna look to pay
21 less.

22 Q Okay. And he goes on to say that,

1 Nowhere in Mr. Brown's report does he attempt to
2 evaluate the credit-worthiness of World Health or
3 the company's ability to service and repay its
4 debts.

5 Is -- is that fair?

6 A I don't know that that's fair. We're
7 talking about a restructuring event here. So
8 that's how the debt's gonna get serviced. It's
9 going to be restructured as it was. They swapped
10 it out for different interest-bearing securities
11 six weeks later, so --

12 Q Okay. So creditworthiness is -- you
13 don't believe is relevant?

14 A I -- I didn't -- I -- can you ask the
15 question? I -- I don't understand.

16 Q Yeah, well, he refers to -- he criticizes
17 your report for not attempting to evaluate
18 creditworthiness of World Health or the company's
19 ability to service and repay its debt.

20 And first of all, do you agree that you
21 didn't do that?

22 A No, I don't agree. I -- that's what my

1 test does. It looks at the exchange of value. It
2 looks at -- in a restructuring, whether that
3 restructuring hasan -- happened August 31,
4 September 30, you know, or whatever point, would
5 they have been able to receive value for those
6 securities. My report absolutely considers that.

7 Q Okay. So -- so in your view, your report
8 does evaluate the credit-worthiness of World Health
9 or the company's ability to service and repay its
10 debts?

11 A Yeah, to repay that debt through a --
12 whether it's via a sale or an exchange of
13 securities such as they did, yes.

14 Q Okay. He also criticizes you for not
15 performing any direct valuation of the convertible
16 debenture or bridge loan securities.

17 Do you agree with that?

18 A No.

19 Q Did you perform a direct valuation of the
20 convertible debenture?

21 A I am not sure what a direct valuation
22 means.

1 Q A value -- a determination of how much
2 the convertible debenture is worth.

3 A Yeah, I -- you know, Mr. Pump I think is
4 coming at this from sort of a tax valuation or
5 accounting valuation perspective. In a
6 restructuring, as was fully anticipated here and is
7 what eventually came to bear, for good or for bad,
8 that's how I conducted the analysis. That's how
9 Standard & Poor's, the credit rating agency -- are
10 you familiar with them? That's how they conduct
11 their analysis. I mean that's what you do in a
12 restructuring scenario.

13 Q But my question is did you perform a
14 direct valuation of the convertible debenture?

15 A And I -- again, I guess I'll defer to
16 what I opined on --

17 Q Okay.

18 A -- which is I looked -- tested the
19 reasonableness of the portfolio. That portfolio
20 contains those securities. And it was covered.

21 Q Okay. And did you perform a direct
22 valuation of the bridge loan securities?

1 A Same answer.

2 Q Okay. And he goes on to criticize you
3 for failing to even mention much less analyze the
4 fact that as of the valuation dates World Health
5 was in default on its debenture and bridge loan
6 securities.

7 And first of all, I think that's true,
8 right? You don't -- you don't mention that in your
9 report?

10 A I'm not sure. I -- I mean it's certainly
11 part of my analysis.

12 Q Okay. How does that fact -- how does the
13 fact that the World Health was in default factor
14 into your analysis?

15 A It makes a restructuring more likely.

16 Q Why?

17 A Because it's due and owing. It's due and
18 owing. You have -- you have -- you have a creditor
19 you owe money to. You're in default. You have to
20 deal with them.

21 Q Okay.

22 A Whether it's by paying in cash and other

1 security, selling the business and taking care of
2 that debt, that's -- you have to deal with that.

3 Q Okay. Well, he says that this is a
4 significant fact that would have altered the val --
5 affected the value of the debenture and bridge loan
6 securities and should have been part of Mr. Brown's
7 analysis.

8 Do you agree with that?

9 A No. Mr. Pump doesn't seem to understand
10 how restructuring works.

11 Q Okay. He doesn't understand how -- how
12 restructuring works?

13 A Apparently.

14 Q Okay. And -- and fair to say you have
15 vast experience in restructuring valuations?

16 A I've probably done a -- I've got
17 experience on three different sides of
18 restructuring.

19 Q Okay. But actually performing a
20 valuation analysis in a restructuring?

21 A Yeah, forty to fifty times.

22 Q Okay. Under your own signature?

1 A Yeah, sure. I mean part of those were at
2 a fund where I put together a memo.

3 Q You put together a memo on -- on
4 valuation in terms of restructuring?

5 A Absolutely.

6 Q Okay. And that was at the hedge fund?

7 A Correct.

8 Q And what -- what was the purpose of those
9 memos?

10 A To advise upon the buying or selling of
11 securities.

12 Q Okay. The internal memos that we talked
13 about earlier today?

14 A Correct.

15 Q Okay. And then Mr. Pump goes on to say,
16 The debt securities that are in default typically
17 trade at values that are substantially below par,
18 often at prices that are only a small fraction of
19 par value.

20 Is that true?

21 A It can be true. Sometimes they trade
22 above par.

1 THE REPORTER: Sometimes what?

2 THE WITNESS: They trade above par. It's
3 based on coverage.

4 BY MR. WILLIAMS:

5 Q So you don't agree that -- that -- with
6 what he says about -- necessarily agree with what
7 he says about debt securities and default being a
8 value substantially below par?

9 A Some are. Some aren't.

10 Q Can you say whether or not most are below
11 par?

12 A Yeah, maybe it's most. I'm not -- I'm
13 not sure. I haven't done an analysis, but you --

14 Q Based on your experience.

15 A Yeah, usually, if you're talking about a
16 distressed entity, there's some form of distress.
17 It depends on if there's coverage or not. But if a
18 company is covered, if your bonds are covered, then
19 you know it's gonna -- it's gonna trade at par or
20 above. And there's numerous examples of that.

21 Q Okay.

22 A So it's a facts and circumstances thing.

1 That's -- that's the point.

2 Q Facts and circumstances?

3 A Of that specific case, absolutely.

4 Q Okay. Let me ask you to turn to page 10
5 of the report.

6 And on page 10, the last paragraph above
7 subheading B, it says, It should be noted that
8 while the guideline public company method used by
9 Mr. Brown is a standard valuation methodology used
10 to estimate enterprise value and common stock
11 value, it is not a standard methodology used to
12 value debt.

13 Do you agree with that?

14 A No.

15 Q And so is that a standard methodology
16 that you employed to value debt?

17 A It's the methodology I employed.

18 Q Apart from this case?

19 A Yes.

20 Q Is it a standard methodology used by Alix
21 Partners to value debt?

22 A Sure.

1 Q Okay. Is it a standard meth --
2 methodology used by the managing directors that
3 you've worked with to value debt?

4 A I'm not sure if all of them have
5 conducted that analysis. I can't speak to all of
6 them.

7 Q Okay. How about Mr. DenUyl?

8 A He doesn't typically look at debt.

9 Q Okay. And so when he does look at debt.
10 Do you know if he uses a -- an enterprise value
11 methodology?

12 A I would say in the circumstances that
13 I've worked with him on, yes.

14 Q Okay.

15 A I mean that's a -- again, it's an
16 industry standard, you're looking at coverage.
17 That's how restructurings are done.

18 Q Okay.

19 A That's how you get to -- that's how you
20 carve up the pie in a restructuring. Whether it's
21 in court, out of court, a -- a swap of securities,
22 that's how it's done.

1 Q And I think you've indicated that -- that
2 you worked with Mr. DenUyl on a number of -- of
3 expert reports, correct?

4 A That's correct.

5 Q And is -- is the methodology that you
6 employed in this case consistent with the
7 methodologies that -- that you've undertaken in
8 previous engagements?

9 A What do you mean by consistent? Did I --

10 Q Same approach.

11 A -- value -- well, there's a -- I mean
12 there's a wide ran -- yes, I've used market comp
13 approaches. I've looked at the public market cap.
14 I mean we didn't value a potentially distressed
15 healthcare staffing company, if that's what you
16 mean.

17 Q Okay.

18 MR. WILLIAMS: And why don't we go off
19 the -- go off the record. I may be pretty much
20 done.

21 MS. LAMBRACOPOULOS: Okay.

22 MR. WILLIAMS: Just give me --

1 MS. LAMBRACOPOULOS: Yeah, I have about
2 15 -- maybe 10 or 15 minutes worth of questions,
3 so --

4 MR. WILLIAMS: Okay.

5 MS. LAMBRACOPOULOS: Do you want to --

6 VIDEOGRAPHER: This concludes tape number
7 three in the video deposition of Marc Brown. The
8 time on the video is 1:38 p.m. We are off the
9 record.

10 (Recess)

11 VIDEOGRAPHER: This begins tape number
12 four in the video deposition of Marc Brown. The
13 time on the video is 1:51 p.m. We are on the
14 record.

15 BY MR. WILLIAMS:

16 Q Okay. Mr. Brown, I just wanted you to
17 take a look back at your -- your report, which
18 we've labeled as Brown Exhibit Number 2, briefly.

19 A Okay.

20 Q And I'm going to direct your attention to
21 page 7 of the document.

22 A Yes.

1 Q And in the first bullet point you
2 indicate here, as you're describing the various --
3 the five groups of World Health securities in the
4 side pocket. It's convertible debenture.

5 Do you know what -- what Palisades'
6 policy on valuing convertible debentures was?

7 A Yeah. I guess it had two parts. One was
8 sort of the formulaic convention that they had in
9 their -- in their offering documents, the PPM, the
10 COM. And then I guess the second part is, you
11 know, their ability to use discretion if they don't
12 think that's fair value.

13 Q Okay. And do you know what the formulaic
14 convention was with respect to convertible
15 debentures?

16 A Yeah, it was something fairly
17 conservative. You know, you take the -- the
18 principal plus accrued interest and take the
19 difference between the conversion price and the
20 share price and multiply by 50, or something to
21 that affect.

22 Q Do you know if they were -- they were

1 supposed to value convertible debentures as if
2 converted?

3 A That is what they adopted in their
4 agreements I think in March of '05. I think the
5 testimony from David Sims and maybe some others,
6 that prior to that they did it on a, you know, more
7 of a par plus accrued basis.

8 THE REPORTER: More of a which basis?

9 THE WITNESS: Par plus accrued.

10 BY MR. WILLIAMS:

11 Q Do you know what the value of -- of
12 Palisades' position in World Health convertible
13 debentures would have been if they had val -- if it
14 had been valued on an as-of converted basis?

15 A I think Mr. Pump makes an attempt to do
16 that in his reports.

17 Q Other than Mr. -- what you read in
18 Mr. Pump's reports, do you -- do you know?

19 A No.

20 Q Did you make any effort to analyze that?

21 A No.

22 Q Did you determine, apart from your

1 valuation of -- of the what I'll call the basket of
2 World Health securities held in the side pocket,
3 did you make any individual valuation of the -- the
4 fund's position in World Health convertible
5 debentures?

6 A No. That's not what I was asked to do.
7 I mean I was asked to test the reasonableness of
8 the -- of the totality of it. And it was
9 reasonable. I mean that's why they had the
10 discretion, because that was not -- and it gets --
11 it gets -- you know, this is I think what Mr. Pump
12 fails to realize.

13 At some point there -- there's a lot of
14 testimony about it from Mr. Mannion and
15 Mr. Reckless. And so the reason why you do it this
16 way, that you have a debenture that's convertible,
17 is you have downside protection 'cause you have
18 debt, and then if the stock goes through the roof
19 and you convert and you sell the stock and you make
20 your money.

21 So they were looking at on a coverage
22 basis, which is consistent with how you -- how you

1 invest via debenture.

2 Q Okay. And then -- and you indicated that
3 apart from following the formulaic procedures of --
4 of the offering memorandum, the fund managers also
5 had discretion.

6 And do you believe that -- that -- strike
7 the question.

8 Apart from the -- the formulaic
9 procedures that -- that you described with respect
10 to convertible debentures, the managers also had
11 discretion.

12 And based on the exercise of that
13 discretion, is -- is it your -- is it your
14 understanding that they exercised that discretion
15 in calculating the value of the convertible
16 debentures?

17 A That's what it would appear to have
18 occurred. I mean that's -- I -- I think -- I think
19 what -- what you need to understand what happened
20 is, as I understand it, because I've been in this
21 situation, is you sort of take off one hat and put
22 on another, right.

1 August 8th, everything's fine. You know,
2 you're doing whatever you're doing. August 17th,
3 August 31, you're in a restructuring scenario.
4 You've now sort of -- thinking about am I covered.
5 You know, am I gonna get value back in exchange for
6 this. And that's how you would look at the thing.
7 So that's what I looked at in totality.

8 Q So if --

9 A And I think that's what -- and from --
10 from what I've read, you know, whether it's the
11 September 8th letter or their testimony, that
12 appears to be what they were thinking as well.
13 Which makes sense.

14 Q Are you covered in terms of liquidation
15 of the assets?

16 A I don't know about liquidation. I mean
17 it -- which I don't think was necessarily on the
18 table at this point. It's a -- it's a sale of the
19 assets or a, you know, exchange of securities or,
20 you know, an infusion of capital or what have you.

21 Q And so -- so the concern would be -- or
22 the thought process, as -- as you indicated would

1 be that because of the distressed situation that
2 the thought produce would turn to: Am I covered?
3 Did I say that right?

4 A Yes.

5 Q Okay.

6 A I believe they testified to that.

7 Q Okay. So prior to the distressed
8 situation, the thought process wouldn't necessarily
9 be: Am I covered?

10 A No, if you've got a company that doesn't
11 have any distress and, you know, you invest in the
12 convertible debentures for a reason; it's to give
13 you protection, but you've got more of an equity
14 hat on at that point.

15 Q Okay. So if -- if originally the
16 convertible debentures were valued at -- at 7
17 million, once the company becomes distressed and
18 you go into am-I-covered mode, the asset might be
19 worth more?

20 A Well, it was always worth more. I mean
21 7's what was on the books. I mean when they turned
22 it in, when they said it's time to pay up, they

1 would've gotten 9.67 million.

2 Q Okay.

3 A So they were at a discount to what its
4 face value was.

5 Q Okay. They're at a discount to face
6 value?

7 A And face value was covered, right.

8 Q And -- and do you know -- I'm --
9 consistent with the -- the valuation policies of
10 the fund, were they at a discount?

11 A Were they at -- I -- I -- can you re-ask
12 the question? I don't understand.

13 Q Yeah.

14 With respect to the valuation policies of
15 the fund, were the convertible debentures valued at
16 a discount or were they valued where they were
17 supposed to be or were they overstated?

18 A Well, they -- it was what it cost them.
19 So they paid 7.35 million for this 9.67 million
20 face debenture.

21 Q Okay.

22 A So it was on their books at cost.

1 Q And being on their books at cost, was
2 that consistent with the fund's valuation policy?

3 A I don't know that it was inconsistent. I
4 mean there's certainly -- one of them is a
5 provision for putting things at cost plus accrued.
6 And I think before they switched to as-converted
7 basis, that's how they accounted for it.

8 Q Do you know if -- if -- what the value of
9 the convertible debentures would have been on an
10 as-converted basis?

11 A I don't.

12 Q Do you know if it's less -- would have
13 been less than \$7 million?

14 A I would expect that it would be because
15 necessarily it's a very conservative measure that
16 factors in a stock price that's now below your
17 strike.

18 Q Because the stock price is greater?

19 A Yeah, it's -- your stocks -- you're --
20 you're of the money on -- on your -- you go from
21 being in the money to out of the money on the
22 option vetted.

1 Q Okay. And with respect to the promissory
2 note, did you -- do you know what the funds'
3 valuation policies called for in terms of valuing a
4 promissory note?

5 A I think it's -- you know, there was
6 provisions in a couple of the documents. One was
7 sort of a -- you know, like a cost plus expected
8 profit and then back to, you know, using your --
9 your opinion, your, you know, your good faith
10 estimate of fair value.

11 Q Okay. Good faith estimate of fair value?

12 A I think that's what it says.

13 Q Okay. And you talked about your -- your
14 extensive experience in -- in restructurings.

15 With respect to your experience, have you
16 ever known a -- a promissory note that was in
17 default to trade at face value?

18 A Promissory notes typically don't trade.

19 Q To be sold at face value?

20 A They typically -- they're not really
21 exchanged.

22 Q Okay. Why is that?

1 A Because you are sort of waiting for it to
2 play out. You may get paid par plus interest and
3 come out ahead. You may loose a little at the --
4 the end of the restructuring. It's hard to say.

5 Q In your experience they're typically not
6 sold?

7 A They're -- I'm sorry, they're not?

8 Q They're typically not sold?

9 A Yeah, a promissory note, it's -- it's a
10 unique -- it's not -- you know, it's not a typical
11 instrument that gets sold in the restructuring.

12 Q Okay.

13 A It may be exchanged. It'll be settled
14 when the restructuring's settled, whether it's a
15 debt for equity swap or if it eventually goes to
16 bankruptcy.

17 Q It'll be settled by -- by the -- the
18 person -- the entity that's obligated under the
19 note?

20 A It'll be settled by a consensual
21 agreement amongst all the creditors and
22 stakeholders. So the company, the senior lenders,

1 the jury lenders, equity, everybody sort of in the
2 mix has to come together and vote on a --

3 THE REPORTER: What? What? Please say
4 that louder? I didn't hear it clearly.

5 THE WITNESS: Everybody in the mix has to
6 come together and -- and vote the plan of
7 reorganization if you're impaired.

8 BY MR. WILLIAMS:

9 Q Is that -- is that a bankruptcy?

10 A Yes.

11 Q Okay.

12 A If you're out of bankruptcy, you need an
13 even higher margin of people going to --.

14 Q Have you ever known individuals who held
15 assets or who are creditors of a -- of an entity in
16 bankruptcy to sell those obligations?

17 A Sure. People'll sell that stuff.

18 Q They typically sell it on the face value?

19 A Typically, probably not. There -- that's
20 how a distressed debt investing got started. You'd
21 have commercial banks that made a loan. And when
22 it went into default, they would panic and sell it

1 at a massive discount and guys would step in and
2 buy it and make a ton of money.

3 Q Okay. And you --

4 A And there's -- there's mutual funds and
5 specifically I think insurance companies that can
6 only invest in investment grade bonds. So the
7 minute General Motors and Ford got downgraded in
8 May of 2005 to junk status, people had to sell
9 their bonds. They couldn't hold it by regulation,
10 by policy.

11 Q And so there's a market for these --
12 these distressed debt, what I'll refer to?

13 A Yes.

14 Q And these distressed debts, would you
15 agree they typically sell at less than face value?

16 A Typically, probably.

17 Q And with respect to the --

18 A But it's not --

19 Q Well, go ahead.

20 A The point is, it's -- it's people that
21 are forced to sell. It's not fair value.

22 Q Okay. But you agree that there's a

1 market?

2 A There is a market. It's -- it's not
3 necessarily liquid. It's not necessarily fully
4 informed. It certainly isn't necessarily willing
5 on a seller's part.

6 Q Okay. And the discounts that -- that are
7 reflected in this market, are they -- are they
8 substantial discounts from face?

9 A Facts and circumstances. It depends.
10 Sometimes stuff sells at a premium. Tronox's bonds
11 sold at a premium.

12 THE REPORTER: Which one? I didn't --

13 THE WITNESS: Tronox, T-R-O-N-O-X. So we
14 advised -- we advised the Government on.

15 BY MR. WILLIAMS:

16 Q Okay. So sometimes bonds sell at a
17 premium?

18 A Yeah. It's all about coverage. Mr. Pump
19 talks about his American Airlines bonds. In there,
20 he picks one series of bonds which sits up at a
21 holdco level. And it doesn't have the securities
22 that other bonds that trade more close to par.

1 Q Okay. So it's not -- so if -- if at
2 times these -- these obligations sell at -- at a
3 premium, it's not al -- always distressed sellers?

4 A It's not always distressed sellers. I
5 don't understand the question.

6 Q Well, you indicate that these -- I think
7 you indicate -- and correct me if I'm
8 misunderstanding you -- I thought you indicated
9 that these bonds tended to sell at below face value
10 because there were a lot of distressed sellers who
11 were desperate to get rid of them?

12 A Yeah, that's -- that's your typical
13 source of these source of instruments, yes.

14 Q Okay. And -- and these -- these
15 instruments are -- because the -- these instruments
16 are -- are sold publicly, that there's a market for
17 them, would you agree with that?

18 MS. LAMBRACOPOULOS: I'm sorry, which
19 instruments are you talking about?

20 BY MR. WILLIAMS:

21 Q Distressed debt securities.

22 MS. LAMBRACOPOULOS: Generally speaking?

1 BY MR. WILLIAMS:

2 Q Generally.

3 A Yeah, it's a little more complicated than
4 that. Because sometimes it's bank loans, which is
5 technically not a sale. It's a -- it's an
6 assignment.

7 Q Okay.

8 A So there's various mechanics that are
9 different behind that. But there is a market.
10 It's not always active. It's not all liquid. It's
11 certainly on a security-by-security basis.

12 Q Okay.

13 A But it's all driven by what I used to do,
14 and that's: Am I covered?

15 Q Okay. And would you agree with me that
16 with respect to the -- the bank loans that are
17 assigned, they're typically assigned for less than
18 face value?

19 A I would not agree with that at all.

20 Q They're not?

21 A No.

22 Q Okay. Would you say that they're

1 typically assigned at face value or -- or greater?

2 A I don't know. I mean they trade all over
3 the place. It depends on -- it depends on the
4 circumstances. There's -- most bank loans are
5 secure. Some aren't. So that's gonna be a
6 difference. Some companies, you look at it and go,
7 wow, that's covered. That -- the value of those
8 assets is 300 million and there's only 200 million
9 of debt, so I'm fine.

10 Q Okay. And so buyers typically buy
11 these -- these instruments, or assign these
12 instruments as you indicate, at face value?

13 A It's -- it's a range. I don't know what
14 it is.

15 Q Okay. And with respect to the -- the
16 loan that you indicate at the top of page 8, do you
17 know what the -- what the fund's valuation policy
18 with respect to loans is?

19 A I'm not sure there's a specific policy to
20 loans. It struck me that it fell under sort of two
21 baskets. One was cost plus a profit or loss
22 estimate, or the good faith assessment of fair

1 value.

2 Q Did the fact that you couldn't quite find
3 a specific policy pertaining to loans, did -- did
4 that suggest to you that perhaps the fund was not
5 contemplating loaning money?

6 A I think their -- their offering documents
7 looked like they changed a little bit over time.
8 You know, strategies change. Opportunities change.
9 In the investment field, you can't just necessarily
10 stick to what you thought you'd do day one.

11 Q Okay. And other than the -- the
12 evaluation of the World Health assets and sort of
13 taken together, did you perform any individual
14 analysis of the -- the value of this \$2 million
15 loan?

16 A I believe you already asked me that
17 question. No. I looked at the portfolio and when
18 it was covered.

19 Q And the restricted stock we've discussed.
20 With respect to the common stock, the
21 common stock is valued at \$110,000, which is
22 approximately 22 cents a share as of August 31st,

1 2005.

2 And do you know what the company's -- the
3 fund's policy with respect to the valuation of
4 common stock was?

5 A I think it was, you know, whether it was
6 the last price of the day or, you know, a bid out
7 spread on a day, I'm not sure. But it was
8 something in line of 22 cents.

9 Q Something approximating with -- with the
10 closing price that the stock --

11 A Yeah, something approximating it.

12 Q Okay.

13 A Which I mean they actually went
14 conservative when in September and October, even
15 though there was a price, they marked both the
16 common and the restricted down to zero.

17 Q Okay. Do -- do you know whether or not
18 the fund needed a registration statement to be
19 effective in order to trade?

20 A I don't know.

21 Q Do you know whether there was a
22 registration statement in fact during the period of

1 the analysis of the World Health's restatement?

2 A I did not -- I did not look at that. It
3 was outside of the scope of what I was asked to do.

4 Q Fair enough.

5 And with respect to the -- the common
6 stock, they -- they valued the common stock at --
7 at the exact closing price of the company's stock
8 price; is that right?

9 A I think that's right.

10 Q And that's consistent with the --

11 A At least in August.

12 Q At least in August.

13 A And then in September and October, they
14 put zero weight to it, zero value.

15 Q Fair enough.

16 And at least in August, with respect
17 to -- to that particular valuation, would you agree
18 with me that they followed the -- what you
19 characterized as I think the formulaic valuation
20 policy of the fund?

21 A I'm sorry, can you ask the question
22 again?

1 Q Yeah.

2 With respect to the valuation of the
3 common stock in August of 2005, would you agree
4 with me that at least with respect to those 500,000
5 shares, they valued the stock according to the
6 stated formulaic policy of the fund?

7 A I don't -- I -- I don't think it's
8 formulaic. That's why I mean the --

9 Q I'm sorry, I --

10 A -- debenture --

11 Q -- was --

12 THE REPORTER: Wait, wait, y'all. One at
13 a time, please. I can't get two.

14 BY MR. WILLIAMS:

15 Q Go ahead.

16 A The debenture was formulaic. The -- the
17 common stock is whatever it's on at the market at
18 the time.

19 Q Fair enough.

20 Common stock is whatever the stock price
21 is?

22 A I believe that's -- I believe that's

1 right.

2 MR. WILLIAMS: Okay. Those are the only
3 questions I have for you today, Mr. Brown. Thank
4 you very much.

5 THE WITNESS: Okay.

6 EXAMINATION BY COUNSEL FOR DEFENDANTS

7 BY MS. LAMBRACOPOULOS:

8 Q I just have a few more questions for you,
9 Mr. Brown.

10 Have you also had an opportunity --
11 you've reviewed Mr. Pump's rebuttal to your expert
12 report.

13 Have you also had an opportunity to
14 review his opening report in this matter?

15 A I did.

16 Q Okay. And you discussed today some of
17 your disagreements with Mr. Pump's opinions in --
18 in his report.

19 Beyond that discussion, are there any
20 other disagreements that you had with Mr. Pump's
21 analysis?

22 A Yeah, I mean on the rebuttal report, as I

1 said, I think he misses the picture of what the
2 facts and circumstances were of the situation that
3 were -- in a restructuring environment were not
4 marking the books for your tax return at the end of
5 the year. You know, you need to look at what the
6 most likely outcome of the situation is in terms of
7 how you look at -- at value.

8 So I think he misses the mark there with
9 some of his criticisms of me and some of his stuff
10 in his original report.

11 You know, he also -- I'm not a lawyer,
12 you know. I -- I review valuation documents all
13 the time, contracts. I mean he's citing various
14 things that I'm not sure they apply. You know, the
15 fund documents sort of speak for themselves. And
16 this private equity guideline that he brings up
17 is -- I mean it -- it -- the guideline itself says,
18 you know, don't listen to us, go to your fund
19 documents for how you should value the securities,
20 so --

21 Q And did the fund documents provide for
22 the private equity guidelines to be applied by the

1 fund --

2 A No.

3 Q -- managers?

4 A No. They -- fairly new guidelines. I
5 don't even think they really apply to this
6 situation. And they're designed for private
7 equities like LBO shops and venture capital funds.

8 Q Did the fund documents, the Palisades
9 fund documents, require that GAAP, G-A-A-P, be
10 applied in valuing the portfolio?

11 A Not that I saw. But I'm -- I'm -- you
12 know, I -- I didn't see them say that they had to
13 account for GAAP, no.

14 Q Did you have any other disagreements with
15 Mr. Pump?

16 A You know, I disagreed -- I don't think he
17 supported his comments about, you know, my analysis
18 being misleading. And, you know, he seemed to fail
19 to understand my analysis. You know, he talks
20 about the differences between the comparables and
21 how -- he sort of ignores my discounts, you know,
22 the fact that I discount those multiples

1 effectively by 33 percent and applied further
2 discounts to the revenue and EBITDA used.

3 Q Now, you seem to have taken a different
4 approach from Mr. Pump in rendering an opinion here
5 as to the three months at issue in the complaint.

6 Why was it that you took the approach
7 that you took?

8 A Yeah, I -- I took the approach I took
9 sort of based on my own experience and putting
10 myself in the shoes of what a hedge fund manager
11 would be doing at the time. They would be reacting
12 to the markets and to the situation.

13 And it changed from everything's doing
14 well to, you know, there's some problems here and
15 we have some distressed. At what level, it's
16 unclear. But we're gonna need to work this out.
17 We're gonna bridge them some money. It's gonna
18 become due in short order. And it's, frankly, it's
19 gonna give us leverage on the situation.

20 So they've got leverage now. And they're
21 looking to effectuate a restructuring. Whether
22 it's through a security swap or a sale or what have

1 you, that's how these situations play out. So
2 that's how they appeared to have looked at it,
3 which made complete sense to me. That's how I
4 would look at it. It's how I looked at it when I
5 worked at the hedge fund when I was investing in
6 the markets.

7 That's how you look at it when you're a
8 restructuring advisor, whether you're advising
9 banks or the unsecured creditors or the debtors
10 themselves or other interested parties.

11 Q And based on your experience, is it your
12 expert opinion that that approach is what's
13 typically used in the types of circumstances that
14 Mr. Mannion and Mr. Reckless found themselves in?

15 MR. WILLIAMS: Objection.

16 THE WITNESS: Yes. I mean it -- it was
17 clear to me it was a restructuring event. How it
18 was gonna play out was uncertain, but you sort of
19 switch how you think about things.

20 BY MS. LAMBRAKOPOULOS:

21 Q Mr. Pump references in his report willing
22 sellers and willing buyers in certain instances.

1 To your knowledge, were Mr. Mannion and
2 Mr. Reckless willing sellers on behalf of Palisades
3 of the debt and securities that were in the World
4 Health side pocket?

5 MR. WILLIAMS: Objection.

6 THE WITNESS: Not to my knowledge. And
7 their actions sort of seemed to indicate the
8 reverse, where they put additional money in. They
9 were working, trying to get more information. They
10 ended up suing trying to get more information.
11 They end up doing a securities exchange. So, you
12 know, they didn't seem to go out to seek to sell
13 these securities.

14 BY MS. LAMBRAKOPOULOS:

15 Q So how did impact Mr. Pump's analysis
16 respecting a value based on willing sellers and
17 willing buyers?

18 A If they're not willing sellers, then it
19 sort of renders his hypothetical -- which he
20 actually doesn't do. I mean he states that he
21 wasn't asked to value securities. But his
22 hypothetical that there's a willing seller, it --

1 it doesn't appear that there was.

2 Q I'd like to ask you to look at page 11 of
3 Mr. Pump's rebuttal report, Exhibit 3.

4 A Okay.

5 Q Okay. And sort of in the middle of
6 the -- the page, Mr. Pump indicates, The Brown
7 report does not mention that World Health's
8 financial results may have significant -- may have
9 been significantly overstated, according to a
10 complaint filed by the SEC against World Health's
11 former CEO.

12 And there's a quote from the complaint
13 in -- in that --

14 A Uh-huh.

15 Q -- that paragraph.

16 A Yes, I see it.

17 Q Do you know when the complaint was filed
18 by the SEC against Mr. McDonald?

19 A Well, he doesn't footnote this one like
20 he does other ones. My understanding, it was filed
21 in late 2009.

22 Q And do you know how long an investigation

1 preced -- by the SEC preceded the filing of that
2 particular complaint?

3 A I -- I don't know. I mean obviously, you
4 know, four-ish years potentially, right -- I mean
5 it comes -- they filed a complaint late 2009. And
6 these things happened in August of 2005. So I
7 would say approximately four years. But I don't
8 specifically know.

9 Q And in your analysis, did you factor into
10 your analysis the allegations that were made by the
11 SEC regarding World Health's financial statements
12 in 2009?

13 A No. It -- it wasn't known or knowable at
14 the time.

15 Q At the time meaning?

16 A As of August 31, September 30th, and then
17 October 31st, 2005.

18 Q Now, you also testified a bunch of times
19 today about a standstill agreement that was entered
20 into between Palisades and World Health?

21 A Correct.

22 Q Did you review the terms of the

1 standstill agreement in connection with rendering
2 your opinion?

3 A I did.

4 Q And were the terms of the standstill
5 agreement a factor in your rendering the opinion?

6 A Yeah, I'd say so. I mean it -- the fact
7 that they went out and did a -- an exchange of
8 securities with the company -- again, willing
9 seller/willing buyer at the time -- to me supported
10 their belief that their valuations were reasonable,
11 they had coverage.

12 I mean they traded from a debt security
13 down to a preferred stock, which is sort of lower
14 in their coverage universe. The debt gets paid
15 before stock does. So that strikes me as having
16 faith in the company and in that the coverage that
17 they -- they expected.

18 Q With respect to the NAV that was
19 performed by the fund managers for the Palisades'
20 side pocket as of October 31st, 2005, how did that
21 NAV compare with the terms of the standstill
22 agreement?

1 A The total sort of value reported on the
2 NAV at October 31st, '05, was actually a little bit
3 lower than what the standstill agreement indicated.

4 Q Okay. And did you reflect that in your
5 report?

6 A Yeah, I showed -- I showed both of them.
7 I actually tested the higher number, what they
8 actually did. You know, they actually were holding
9 these different securities by 10/31. As I
10 understood it. I don't know if there was some
11 delay, but as -- that's the transaction that
12 occurred, so I -- I reflected that in my notes.

13 Q So in terms of testing the reasonableness
14 of the October 31, 2005, NAV with respect to the
15 side pocket, would you say that the -- the numbers
16 assigned were reasonable?

17 MR. WILLIAMS: Objection.

18 THE WITNESS: Yes.

19 BY MS. LAMBRACOPOULOS:

20 Q And with respect to each of the three
21 periods at issue in the SEC's complaint regarding
22 the side pocket, August 31st, September 30th, and

1 October 31st, 2005, is it your opinion that the
2 values assigned to the World Health side pocket by
3 Mr. Mannion and Mr. Reckless were reasonable?

4 MR. WILLIAMS: Objection.

5 THE WITNESS: Yes.

6 MS. LAMBRACOPOULOS: Okay. I do not have
7 any other questions.

8 MR. WILLIAMS: A couple.

9 EXAMINATION BY COUNSEL FOR PLAINTIFF

10 BY MR. WILLIAMS:

11 Q You testified that you believed that the
12 values were reasonable.

13 Do you believe the values were accurate?

14 A I -- I didn't look at whether they were
15 accurate. I looked at if they were reasonable.
16 They sort of were what they were, right. They were
17 on the books, and was it reasonable.

18 Q Okay. And you talked about your
19 experience at a hedge fund.

20 You ever worked as a hedge fund manager?

21 A As a hedge fund manager. No. I was an
22 analyst.

1 Q Did you make investment decisions for the
2 hedge fund?

3 A I made investment recommendations.

4 Q Did you make investment decisions?

5 A I made recommendations to the guys that I
6 guess ultimately made or did make the decision,
7 yes.

8 Q Okay. So but you never make the actual
9 decision?

10 A Yeah, but to the -- to the extent that
11 they were gonna buy a bond that I recommended, it's
12 because I told them to.

13 Q And you indicated I think earlier today
14 that some of your dissatisfaction with that
15 position was that you never really knew why they
16 were or weren't acting on your recommendations?

17 A Mine and the rest of the analysts, yes.

18 Q You mentioned the -- the private equity
19 guidelines that -- that Mr. Pump referred to in his
20 analysis.

21 And you indicated that -- that you didn't
22 believe that those guidelines were necessarily

1 applicable to the -- to the valuation decisions
2 made by the -- the Defendants in this case; is that
3 fair?

4 A It's fair. I mean the -- the guidelines
5 themselves appear to be structured for different
6 industries.

7 Q Okay.

8 A And note that if, you know, you should be
9 doing what your fund documents tell you to do, not
10 what we're suggesting.

11 Q Okay. And you indicated that in this
12 case the fund documents provided certain formulaic
13 requirements in terms of valuing certain assets and
14 providing the fund managers with discretion; is
15 that fair?

16 A I believe that's what the documents say,
17 yes.

18 Q Okay. So in the circumstances where the
19 fund managers were exercising their direction --
20 discretion, what guidelines were they using?

21 A What guidelines were they using?

22 Q Yeah.

1 A They were trying to estimate what the
2 fair value of those securities were.

3 Q Right. And in doing that, were they
4 using any guidelines that you're aware of?

5 A I -- I don't know what guidelines they
6 were using. It's --

7 Q Okay.

8 A There's no guidelines laid out in the --
9 in the documents. I don't -- they haven't
10 testified about it, so I don't know.

11 Q Fair enough.

12 And you indicated that -- that Mr. Pump's
13 approach was more of a -- like tax accountant
14 type -- type of analysis; is that right?

15 A Yes.

16 Q Are you an accountant?

17 A No.

18 Q What do accountants do?

19 A They do a lot of things.

20 Q What do they do in terms of the books and
21 records of a company, if you know?

22 MS. LAMBRACOPOULOS: Objection. Form.

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1 THE WITNESS: Are you speaking about the
2 comptroller? The staff accountant? The auditors?
3 What --

4 BY MR. WILLIAMS:

5 Q Well --

6 A -- sort of accounts are you talking
7 about? The CFO?

8 Q Is it fair to say that accountants --
9 would you agree with the statement that accountants
10 tend to document transactions?

11 MS. LAMBRACOPOULOS: Objection. Form.

12 THE WITNESS: I am not an accountant.

13 BY MR. WILLIAMS:

14 Q Okay. Fair enough.

15 MR. WILLIAMS: Okay. Those are the only
16 questions that I have for you, Mr. Brown.

17 THE WITNESS: Okay.

18 MR. WILLIAMS: Appreciate you
19 accommodating all of us and not requiring us to
20 travel to Chicago to speak to you.

21 THE WITNESS: It's a good thing. There's
22 some activity going on in Chicago this weekend,

Marc J. Brown

May 18, 2012

Washington, D.C.

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1 so --

2 MR. WILLIAMS: Is that right?

3 THE WITNESS: Yeah.

4 MR. WILLIAMS: With that, we can go off
5 the record.

6 VIDEOGRAPHER: This concludes the video
7 deposition of Marc Brown. The time on the video is
8 2:22 p.m. And we are off the record.

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12 (Whereupon at 2:22 p.m., the
13 deposition of MARC J. BROWN
14 was adjourned.)

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1 CERTIFICATE OF DEPONENT

2 I hereby certify that I have read and examined the
3 foregoing transcript, and the same is a true and
4 accurate record of the testimony given by me.

5 Any additions or corrections that I feel are
6 necessary, I will attach on a separate sheet of
7 paper to the original transcript.

8

9

10

Signature of Deponent

11

12 I hereby certify that the individual representing
13 himself/herself to be the above-named individual,
14 appeared before me this _____ day of _____,
15 2012, and executed the above certificate in my
16 presence.

17

18

NOTARY PUBLIC IN AND FOR

19

20

21

County Name

22 MY COMMISSION EXPIRES:

1 CERTIFICATE OF NOTARY PUBLIC

2 I, BARBARA A. HUBER, CSR, the officer
3 before whom the foregoing deposition was taken, do
4 hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn
6 by me; that the testimony of said witness was
7 taken by me in stenotypy and thereafter reduced to
8 print under my direction; that said deposition is
9 a true record of the testimony given by said
10 witness; that I am neither counsel for, related
11 to, nor employed by any of the parties to the
12 action in which this deposition was taken; and,
13 furthermore, that I am not a relative or employee
14 of any attorney or counsel employed by the parties
15 hereto, nor financially or otherwise interested in
16 the outcome of this action.

17

18

19 _____

20 BARBARA A. HUBER, CSR

21 Notary Public, in and for District of Columbia

22 My Commission Expires: March 14, 2012